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72-1482

Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1972

No. 72-1482

BROTHERHOOD OF TEAMSTERS AND AUTO TRUCK DRIVERS, LOCAL NO. 70, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, *Petitioner,*

VS.

NATIONAL LABOR RELATIONS BOARD, *Respondent,*

AND

CALIFORNIA TRUCKING ASSOCIATION, INC., *Intervenor.*

PETITION FOR A WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit

VICTOR J. VAN BOURG,
45 Polk Street,
San Francisco, California 94102.
Telephone: (415) 864-4000,
Counsel for Petitioner.

On the Petition:
MICHAEL B. ROGER.

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PETITION FOR A WRIT OF CERTIORARI
to the United States Court of Appeals for the Ninth Circuit

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit in the above entitled case entered on February 26, 1973.

CITATION TO OPINIONS BELOW

In this matter the decision and order of the National Labor Relations Board was issued on December

21, 1971. The Board's decision and order is reported at 194 NLRB No. 106 and is attached in Appendix B hereto, *infra,* page 2. The opinion of the Court of Appeals is reported in ..... F.2d ....., and is attached in Appendix B hereto, *infra,* page 63.

JURISDICTION

The Order of the Court of Appeals denying reconsideration of its opinion was filed on January 19, 1973, and is attached in Appendix B hereto, *infra,* page 65.

The judgment of the Court of Appeals was entered February 26, 1973, and is attached in Appendix B, hereto, *infra,* page 66.

The jurisdiction of this Court is invoked pursuant to 28 USC §1254(1) and 29 USC §160(e).

QUESTIONS PRESENTED

1. Whether Petitioner violated Section 8(b)(3) of the National Labor Relations Act (29 U.S.C. §§158 et seq.) when it refused to be bound to a so-called collective bargaining agreement which has never been proven to exist or has never been shown to have been executed?

2. Whether Petitioner violated Section 8(b)(3) of the National Labor Relations Act by refusing to be bound to a so-called collective bargaining agreement the terms of which would deprive Petitioner's members of the right to select their bargaining representative and would deprive

Petitioner of the right to represent its members in a manner consistent with the prior bargaining history between Petitioner and certain employers.

3. Whether Petitioner violated Section 8(b)(1)(B) of the National Labor Relations Act by taking economic action against employers who refused to bargain with Petitioners contrary to past bargaining history.

4. Whether the findings of the Trial Examiner adopted by the Board, and by the Court of Appeals are supported by substantial evidence.

5. Whether the conduct of the proceedings denied Petitioner procedural due process.

STATUTES INVOLVED

The statutory provisions involved are Section 8(b)(1)(B) and Section 8(b)(3) of the National Labor Relations Act, 61 Stat.136, 73 Stat.519, 29 USC §158(b)(1)(B) and 29 USC §158(b)(3). Said statutes are attached in Appendix A, *infra,* page 1.

STATEMENT

Petitioner is a labor organization which has historically represented trucking company employees in Alameda County, California and has collective bargaining relationships with many trucking employers doing business in Alameda County. In the past the Petitioner either dealt with employers on an individual basis or dealt with them through certain

multi-employer bargaining groups, one of which is known as the California Trucking Association (hereinafter referred to as CTA) (R. 39).[1] Between the period 1964-1970, Petitioner and CTA were parties to certain multi-employer-multi-union collective bargaining agreements known as "The National Master Freight Agreements" and the "Local 70 Pick-up and Delivery Supplemental Agreement." (RX 3). Throughout this period, Local 70 had negotiated and had been party to its own supplemental agreements with CTA covering certain employers in Alameda County.

The National Master Freight Agreements were due to expire on March 31, 1970, and during the latter part of 1969, reopening and/or modification letters were sent by the International Brotherhood of Teamsters to the employer organizations involved seeking to reopen and modify these agreements.[2]

Following the purported reopening, both sides to the National Master Freight Agreement commenced negotiations on or about February 3, 1970, and continued then until a "tentative agreement" was reportedly reached on most issues on or about April 2,

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[1]"R." references are to the formal documents reproduced, pursuant to Rule 4 of the Court of Appeals, as "Volume I, Pleadings"; "Tr." references are to the stenographic transcript of proceedings before the Trial Examiner; "GCX", "RX" and "TXX" references are to Exhibits of the General Counsel, the respondent, and Trial Examiner, respectively, in evidence in the proceedings before the Trial Examiner.

[2]It should be noted that the Teamsters International Union, however, is not a party to any agreement involved herein, and as a matter of fact, expressly disavows *any* responsibility for or obligations under any agreement introduced in the record in this matter.

1970 (Tr. 252). Concurrent with the negotiations of the National Master Freight Agreement for this period, a negotiating team met to negotiate the so-called "Joint Council 7 Supplemental Agreement" and a purported tentative settlement of the non-monetary items was reached by this negotiating committee on March 18, 1970 (R. 43, Tr. 155-157, GCX 17).

The monetary items which were not resolved in the earlier negotiations were referred back to a National Negotiating Committee and were purportedly resolved on or about April 17 (R. 43, Tr. 292-293). In early May, 1970, the terms of the agreed upon revisions to the National Agreement and its supplements were submitted to the membership in a national referendum supervised by the United States Department of Labor (R. 44, Tr. 310-311, GCX 25(a), (b), (c)).[3]

Before the referendum was conducted, Petitioner informed each of the employers with whom it had had a past contractual relationship that it did not believe itself bound by these so-called agreements because the so-called agreements completely stripped Petitioner of any right to represent its members and changed the bargaining representative from Local 70 to another body (Joint Council 7). The International Union was notified as well (GCX 29, 29(a)).

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[3]It had been agreed by all parties that no modification to the agreements would be binding unless and until they were ratified by the membership of the Unions involved. It was further agreed that upon ratification all the terms would become retroactive to April 1, 1970.

At the time the national referendum was conducted, the tentative agreement did not contain accurate wage packages. Subsequent to the announcement of the ratification of the so-called agreements, certain Locals took economic action against employers and as late as July 6, 1970, the monetary package applicable to the so-called agreements and supplements was still not settled (Tr. 382, 422).

On July 15, 1970, the negotiating committees executed a memorandum regarding the reopening of the agreements for the purpose of renegotiating the monetary items (GCX 45).

It was not until at least May 25, 1970, that there was any indication whatsoever of the terms of the so-called agreement when they were published in a publication of the CTA known as "Cal Trux" and followed up by a letter of June 12 from the CTA to its members (GCX 30 and 30(a)).

It was not until at least December 1970, that the so-called agreements were published in a written form (GCX 26).

No one who testified in the proceedings could testify that at any time material herein did he see a signed document bearing the signatures of any of the parties which the Board urged was the collective bargaining agreement to which Petitioner was bound.[4]

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[4]It should be noted that the order of the Board which was enforced by the Court of Appeals requires Local 70 to execute and be bound to a written contract of which G.C. Ex. 26 purports to be a printed copy. Nonetheless, at no time during the proceedings was any executed original or copy of this document introduced other than the printed booklet which was admittedly not even prepared until December 1970.

On or about April 1, 1970, Local 70, along with other Teamster locals commenced economic action against their employers for various reasons, the most notable of which was the fact that there had been no agreement reached during the negotiations referred to earlier. This picketing was short lived.

Again, in early May, picketing reoccurred in Alameda County when members of the CTA were picketed by other Teamster Local Unions. At the same time Petitioners sent copies of letters to members of the CTA's operating facilities in Alameda County inviting them to bargain (R. 46 GCX 9).

Finally, certain threats of economic action occurred following the announced "ratification" on May 18, when employer members of the CTA began unilaterally implementing certain changes in working conditions of persons represented by Local 70 without notifying or bargaining with Local 70 over said changes (GCX 29-29(a) R. 50). (Tr. 649, 652, 655, 713, 716, R. 51-52).[5]

Throughout the proceedings before the Trial Examiner, major procedural irregularities occurred such as admission of hearsay, admission of documents without proper foundation, denial of the right of counsel for Petitioner to examine witnesses in accord-

[5]Again it should be noted that even if the agreements which the Board and the Court seek to enforce were valid and binding on Local 70, the employers who were threatened with economic action could not engage in such unilateral changes for these unilateral changes for these very agreements required a 60 day hiatus in which to negotiate and finalize past practices between the collective bargaining parties before any changes could be undertaken.

ance with applicable law, admission of matters that were beyond the statute of limitations provided for in Section 10(b) of the Act (29 USC §160(b)), admission of matters which were beyond the scope of the pleadings, refusal of the Trial Examiner to allow Petitioner's counsel to subpoena certain records, unequal requirements placed on counsel for Petitioner vis-a-vis the authentication of documents, and refusal of the Trial Examiner to order a person who was within the jurisdiction of the Trial Examiner to testify at the proceedings (See Tr. pages 680, 714, 817, 730-731, 737-738, 690-691, 682-688, 882-884, 714-715, 716-720, 733, 743-745, 746, 887, 959-967, 1069-1076, 1172-1174. Notwithstanding these obvious errors on the part of the Trial Examiner, all of which were prejudicial to the Petitioner, both the Board and the Court of Appeals refused to deal with them and enforced the order of the Trial Examiner. On these facts the Board affirmed the decision of the Trial Examiner. This order was enforced by the Court of Appeals. Both the order of the Board and the order of the Court require Petitioner to execute and be a party to the "National Master Freight Agreement" referred to herein and also the "Joint Council 7 Supplemental Agreement".

REASONS FOR GRANTING THE WRIT

1. The decision of the Board as enforced by the Court of Appeals is in total derogation of the rights guaranteed to Petitioner and its members under Sec-

tion 7 of the Act (29 USC §157), in that the order of the Court requires Local 70 to execute and live up to a so-called collective bargaining argreement which by its very terms deprived Petitioner and its members of the right to choose their own collective bargaining represenatives during the term of this agreement and presumably forever. Thus the decision of the Board as enforced by the Court of Appeals is in direct conflict with the basic rights guaranteed to employees under Section 7 (29 USC §157) of the Act. The decision is in direct conflict with this Court's decision in *National Labor Relations Board v. Jones and Laughlin Steel Corporation,* 301 US 1, wherein this Court referred to the rights under Section 7 of the Act as "fundamental rights".

2. The question of the right of employees to select their collective bargaining representatives and the right of employers and others to deprive employees of this right through so-called multi-employer-multi-union collective bargaining is of vital importance to the proper administration of the National Labor Relations Act. The effect of the decision of the Court of Appeals in enforcing the order of the Board is to forever preclude lawful reaction by employees to collective bargaining situations which totally deprive them of rights guaranteed by Section 7 of the Act. The Court of Appeals specifically rejected the question of whether or not there was a contract in effect and decided the case upon the "attempted withdrawal of the unit under the circumstances described" and cited cases in support thereof. Said cases support the

position that withdrawal from multi-employer-multi-union collective bargaining units is not lawful under the Act unless it is timely or consented to by the parties or unless there are special circumstances justifying the withdrawal. It is thus clear that when the collective bargaining unit is attempting to negotiate an agreement which will forever preclude a portion of that unit from continuing on with their chosen representatives, such unusual circumstances certainly are present. See *NLRB v. Jeffries Bank Note Company,* 281 F.2d 893 (CA 9, 1960), *International Union of Operating Engineers Local 525,* 185 NLRB No. 72, *Retail Associates Inc.,* 120 NLRB 388, 395.[6] Thus the decision of the Court of Appeals in this matter is in direct conflict with the decision in *Jeffries Banknote Co., supra,* wherein the same Court of Appeals upheld the notion that withdrawal from a bargaining unit is proper if unusual circumstances exist. Clearly the attempt to forever preclude Petitioner from bargaining its own Local supplement constitutes an unusual circumstance.

3. The Order of the Court of Appeals enforcing the decision of the Board, although purportedly based on the question of a withdrawal from a bargaining unit, requires Petitioner to execute and be bound to

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[6]It must be noted that Petitioner has never taken the position that it is not in any way bound to a multi-employer-multi-union collective bargaining unit. However, Petitioner has always maintained that this unit in no way can deprive it and its members of the position that they have historically been entitled to, namely, the right to negotiate their own local supplemental agreement. The effect of the Board and Court order in this matter is to deprive Petitioner and its members of these rights and thus to derogate against the policy of the Board.

a collective bargaining agreement, the existence of which is in substantial dispute. Thus, the order of the Board as enforced by the Court requires the Petitioner to be bound to a so-called contract which the employer (CTA) itself could not probably enforce against Petitioner under the most rudimentary of basic contract principles. Most notable is the fact, amply supported by the record, that at all times material herein the activities of Petitioner which were found to be unfair labor practices occurred at a time when the so-called collective bargaining agreement was not even in existence since it was still in its incomplete state. Notwithstanding this obvious fact, the Court of Appeals and the Board require Petitioner to be bound to its terms. Said terms would forever preclude Petitioner from representing its members again. The act of enforcing this agreement has deprived Petitioner of procedural due process as required by *Universal Camera v. NLRB,* 340 US 474, and by the provisions of the Administrative Procedure Act (5 USC §§500 *et seq.).*

4. The order of the Court enforcing the decision of the Board has been made, notwithstanding the obvious defects in the conduct of the proceedings, the totality of which has deprived Petitioner of the due process standards required by *Universal Camera v. NLRB, supra,* and the Administrative Procedure Act, *supra.* The substantial errors made by the Trial Examiner which were ratified by the Board and enforced by the Court of Appeals strike at the very heart of due process (see also *NLRB v. Central Mercedita,*

Inc., 273 F.2d 370 (CA 1, 1959); *NLRB v. National Biscuit Company*, 185 F.2d 123 (CA 3, 1950); *Weaver v. NLRB*, 314 F.2d 260 (CA 5, 1966); *Hagopian and Sons, Inc. v. NLRB*, 395 F.2d 947 (CA 6, 1968); *Koppell M. Company v. NLRB*, 412 F.2d 681 (CA 3, 1969)).

Based on the above cases it is also clear that the failure of the Court of Appeals to refuse to enforce the decision of the Board because of the denial of a fair hearing creates a definite conflict between the Circuits since said cases do not allow enforcement of such Board orders.

5. Substantial evidence does not support the findings of the Trial Examiner, the decision of the Board or the Order of the Court of Appeals. As is clear from the record, Petitioners acted solely to protect and preserve its historical collective bargaining rights. Furthermore the economic activity engaged in by Petitioner was only in direct reaction to the attempts of employers to unilaterally change working conditions when they had no lawful right to do so. The enforcement of the decision of the Board without that decision being based on substantial evidence is in direct conflict with the decision of this Court in *Universal Camera v. NLRB, supra.*

CONCLUSION

For the reasons set forth herein, this petition for a writ of certiorari should be granted.

Respectfully submitted,

VICTOR J. VAN BOURG,
Counsel for Petitioner.

On the Petition:
MICHAEL B. ROGER.

Dated: May 1, 1973.

(Appendices Follow)

Appendix A

29 USC §159. Unfair Labor Practices.

"(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce . . . (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9 (a);

Appendix B

194 NLRB No. 106 D—5777
Alameda County, Calif.

United States of America
Before the National Labor Relations Board

Brotherhood of Teamsters & Auto Truck Drivers Local No. 70, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America and California Trucking Association, Inc.	Case No. 20-CB-2242

DECISION AND ORDER

On August 4, 1971, Trial Examiner Herman Corenman issued the attached Decision in this proceeding. Thereafter, the Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, and the Charging Party filed cross-exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record[1] and the Trial Examiner's Decision in light of the exceptions and

[1]The Respondent's request for oral argument is denied, since in our opinion the record, including the transcript, exhibits, and exceptions and briefs, adequately presents the issues and the positions of the parties.

briefs and has decided to affirm the Trial Examiner's rulings, findings, and conclusions and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Trial Examiner and hereby orders that Respondent Brotherhood of Teamsters & Auto Truck Drivers Local No. 70, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Oakland, California, its officers, agents, and representatives, shall take the action set forth in the Trial Examiner's recommended Order.

Dated, Washington, D.C. Dec 21 1971

John H. Fanning, Member
Howard Jenkins, Jr., Member
Ralph E. Kennedy, Member
(Seal) National Labor Relations Board

TXD-(SF)-99-71
Alameda, Calif.

United States of America
Before the National Labor Relations Board
Division of Trial Examiners
Branch Office
San Francisco, California

Brotherhood of Teamsters & Auto Truck Drivers Local No. 70, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America and California Trucking Association, Inc.	Case No. 20-CB-2242

William F. Roche, Esq., of San Francisco, Calif., for the General Counsel.

Levy & Van Bourg, by *Victor J. Van Bourg, Esq.*, of San Francisco, Calif., for the Respondent.

Littler, Mendelson & Fastiff, by *Wesley J. Fastiff, Esq.*, and *Robert M. Lieber, Esq.*, of San Francisco, Calif., for the Charging Party.

TRIAL EXAMINER'S DECISION

Statement of the Case

HERMAN CORENMAN Q. Trial Examiner: Upon charges filed May 12, 14, and 18, and June 2, 1970, by

California Trucking Association, Inc., herein called CTA, with the office of Region 20 of the National Labor Relations Board, herein called the Board, the General Counsel of the Board issued a complaint on June 9, 1970, against Brotherhood of Teamsters & Auto Truck Drivers Local No. 70, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, herein called Respondent or Local 70, alleging that it is engaging in unfair labor practices within the meaning of Section 8(b)(1)(B) and Section 8 (b)(3) of the National Labor Relations Act, herein called the Act. The Respondent filed an answer denying that it violated the Act.

Pursuant to notice, a hearing was held before the undersigned Trial Examiner on October 29, 1970, January 11, 12, 15, 19, 26, 27, and 28, and February 1, 2, 3, 4, 5, and 11, 1971, at San Francisco, California. All parties were represented by counsel and were afforded opportunity to adduce evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Briefs were received from all parties on June 1, 1971, and they have been carefully considered.[1]

Upon the entire record[2] in this case, and from my observation of the witnesses, I hereby make the following:

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[1]Exhibits Nos. 20 through 260 were not received from the court reporter until June 16, 1971.

[2]The Respondent's letter of June 9, 1971, requesting that the hearing be reopened so that Respondent can subpoena records from employers concerning the existence of contracts with the Respondent as testified to by Respondent's president, Mr. Muniz, at the hearing is hereby denied, inasmuch as the General Counsel in

Findings of Fact

I. Jurisdictional Findings

The complaint alleges, the answer admits, and I find, that at all times material herein CTA has been a voluntary association of employers existing for the purpose, *inter alia,* of representing and assisting through the procedures of multiemployer collective bargaining its employer-members in negotiating and entering into labor contracts with the collective-bargaining representatives of their employees, including the Respondent. During the past year, a substantial number of employer-members of CTA engaged in freight transportation enterprises furnishing interstate transportation services and transporting commodities in interstate commerce. During the past year, the employer-members of CTA referred to above, in the course and conduct of their business operations, received in excess of $50,000 for transporing freight in interstate commerce. At all times ma-

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his letter of June 22, 1971, in opposition to Respondent's request to reopen the hearing, concludes as follows:

> Counsel for the General Counsel agrees whole-heartedly with Respondent's Counsel that ". . . it seems strange" that the individual contracts [which counsel for the Respondent at the hearing agreed to supply to the court reporter as exhibits] have "disappeared." Without accepting Respondent's explanation for non-production of the contracts, Counsel for the General Counsel will not press further for production of the documents; and requests that the Trial Examiner accept Mr. Muniz's uncontradicted testimony that Respondent entered into individual contracts with certain members of C.T.A. on various dates after the current National Master Freight Agreement and Joint Council 7 Supplement Agreement became effective.

The letters from the parties relating to my denial of Respondent's request to reopen the record may be found in a post-hearing exhibit which I have labeled for identification as Trial Examiner's Exhibit.

terial herein, CTA and its employer-members have constituted an employer engaged in commerce and in operations affecting commerce within the meaning of Section 2(2), (6) and (7) of the Act.

II. The Labor Organization Involved

The pleadings establish, and I find, that the Respondent is, and at all times material herein has been, a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. *The Issues*

In essence, the overriding issue in this case is whether the Respondent is bound by the National Master Freight Agreement and its Joint Council No. 7 Supplement, effective for the contract period April 1, 1970 to June 30, 1973. In its answer, at paragraph III the Respondent admits the allegations of paragraph X of the complaint that Respondent "has refused to accept and be bound by terms" of the April 1, 1970 to June 30, 1973 agreement aforesaid. In justification for its refusal to be bound, Respondent alleges in its answer "that at no time was authority given by said Respondent Union to any person, firm, or organization to bargain on its behalf and at no time was it bound by any agreement negotiated or purportedly negotiated as referred to herein."

Paragraph IV of the Respondent's answer admits the allegations of paragraph XI(b) of the complaint

that "at all times since on or about April 3, 1970, Respondent has refused to accept, execute or give full force and effect to the new National Master Freight Agreement and the new Supplemental Agreement referred to in paragraph IX above [in the complaint], in order to force or require C.T.A. and/or its employer-members to bargain with Respondent on an individual basis rather than through T.E.I., their designated bargaining representative." In justification of this admitted conduct, the Respondent in paragraph IV of its answer alleges that at "no time was authority given by said Respondent Union to any person, firm, or organization to bargain on its behalf and at no time was it bound by any agreement negotiated or purportedly negotiated as referred to herein." It also alleges as a defense for its conduct above described that "as of the date of the filing of this answer, no signed copy of any agreement referred to herein has been furnished to Respondent."

Although Respondent makes this admission above-outlined in paragraph IV of its answer, nevertheless it denies that it has caused and engaged in strikes, work stoppages and picketing at the premises of CTA employer-members in order to force or require CTA and/or its employer-members to bargain with the Respondent on an individual basis rather than through TEI, their designated bargaining representative, or that it engaged in the other conduct alleged in paragraph XI(a), (c), and (d) of the complaint.[3]

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[3]During the hearing the General Counsel was permitted, over the objection of Respondent, to amend paragraph XI(a) of the complaint to read as follows:

By virtue of the denials in Respondent's answer, at issue also is the authority of the National Negotiating Committee of Trucking Employers, Inc., herein called TEI, to act as collective-bargaining agent for CTA and its employer-members, as well as the authority of the National Freight Industry Negotiating Committee of the International Brotherhood of Teamsters to negotiate for, and in behalf of, Local 70 with TEI and to bind it through the negotiation of the National Master Freight Agreement and its Joint Council 7 Supplement for April 1, 1970, to June 30, 1973.

Also in issue is whether agreement was reached for a new National Master Freight Agreement and Joint Council 7 Supplement, and if so, whether the Respondent is bound by it.

If the Respondent is bound by the National Master Freight Agreement, and its Joint Council Supplement, it is clear that its conduct admitted by it in paragraphs III and IV of its answer is violative of Sections 8(b)(1)(B) and (3) of the Act. If, on the other hand, the Respondent is not bound by the aforesaid agreement and was not a member of the multi-

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During the period from on or about April 2, 1970, to on or about July 31, 1970, Respondent, by its officers, agents and representatives, including those named in Paragraph V above, has threatened, caused and/or engaged in strikes, work stoppages and picketing at the premises of C.T.A.'s employer-members, including but not limited to Transcon Lines, Delta Lines, Navajo Freight Lines, Pacific Motor Trucking, Ringsby System, DiSalvo Trucking Company, and Santa Fe Trail Transportation Company, in order to force or require C.T.A. and/or its employer-members to bargain with Respondent on an individual basis rather than through T.E.I., their designated bargaining representative.

union group which bargained for the April 1, 1970, to June 30, 1973, National Master Freight Agreement with the TEI, in that event, its conduct admitted by it in paragraph III and IV of the answer would not constitute unfair labor practices within the meaning of the Act.

B. *Background*

The Respondent is affiliated with the International Brotherhood of Teamsters, herein sometimes called the International or IBT, and is bound by and governed by the International Constitution. The Respondent is the majority representative of the truck-drivers and helpers of approximately 66 motor carriers in Alameda County, California, who are members of the CTA and who have authorized the CTA and TEI to represent them in nationwide collective bargaining with the National Freight Industry Committee of the International Brotherhood of Teamsters. The Respondent has approximately 8,500 members. Its office is in Oakland, California.

The Respondent, by written powers of attorney given respectively in October 1963 by its then president, A. N. Leishman, and secretary-treasurer, William Rodger, and in November 1966, by its then president, S. F. Royster, and its secretary-treasurer, A. N. Leishman, authorized the National Over-the-Road and City Cartage Policy and Negotiating Committee[4] to negotiate for, and in behalf of, the Respondent a Na-

[4]The name of this national negotiating committee was shortened for the 1970 to 1973 negotiations to "National Freight Industry Negotiating Committee."

tional Master Freight Agreement, together with riders, supplements or addenda. The union negotiating committees did negotiate National Master Freight Agreements for the 3-year terms 1964 to 1967 and 1967 to 1970. The Respondent concedes that it was bound by the 1964 to 1967 and the 1967 to 1970 National Master Freight Agreements and Joint Council 7 Supplements which were negotiated by the TEI, for and in behalf of the CTA and its authorizing members, and by the National Over-the-Road and City Cartage Policy and Negotiating Committee for and in behalf of the Respondent and other Teamsters locals, as the representatives of employees of authorizing motor carriers.

C. *The 1970 Negotiations*

The 1970 negotiations took place chiefly in Washington, D.C., and again, as in the previous negotiations for a National Master Freight Agreement involved the same two parties, on the one side, the nationwide multiemployer group which had authorized TEI to represent it, and on the other side, the National Freight Industry Negotiating Committee affiliated with the International Brotherhood of Teamsters. Approximately 66 motor carriers in the Alameda, California area, whose Teamster employees were represented by Local 70, were among the hundreds of motor carriers nationwide who had authorized the CTA and/or TEI to represent them in these national negotiations.

Contrary to its practice in the two previous negotiations of the National Master Freight Agreements

in 1964 and 1967, the IBT did not solicit powers of attorney from its affiliated unions for the 1970 negotiations. This fact was publicized by a letter dated December 7, 1970, and was announced by the International Brotherhood of Teamsters General Vice President Frank E. Fitzsimmons, who also served as chairman of the National Freight Industry Negotiating Committee at the first meeting in Washington on January 7, 1970, where, among other matters, credentials were exchanged between the TEI and the National Freight Industry Negotiating Committee.

The aforesaid December 7, 1970 letter (General Counsel's No. 57) read in part as follows:

> We have not solicited new powers of attorney this year from the various local unions that are party to the National Master Freight Agreement and supplements that are applicable to their members. Under the provisions of Article 16, Section 4(a) of the International Constitution, all of the local unions that are presently party to such agreements are required to remain parties to such agreements. You already have a list of such local unions.[5]

The National Master Freight Agreement for the term April 1, 1967, to March 31, 1970 (Respondent's No. 5), which Local 70 concedes was binding on it by its terms at Section 4, provided that:

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[5]Article 16, Section 4(a) of the International's Constitution (General Counsel's No. 49) provides in part as follows:

> Local Unions which are parties to such contracts may not withdraw from such bargaining unit except upon six (6) months' notice and for good cause shown to the satisfaction of the appropriate Conference . . . .

> The employees covered under this Master Agreement and the various Supplements thereto shall constitute one bargaining unit. It is understood that the printing of this Master Agreement and the aforesaid Supplements in separate Agreements is for convenience only and is not intended to create separate bargaining units.

Sometime prior to December 22, 1969, the local unions affiliated with Joint Council of Teamsters No. 7, including Local 70, had requested permission of General Vice President of the International Frank Fitzsimmons to be excluded from the multiunion multiemployer collective-bargaining unit covered by the National Master Freight Agreement and appropriate Supplements thereto, and had requested permission to bargain as a single unit with their appropriate employers. But after conversations held between representatives of the local unions, including the Respondent, and General Vice President Fitzsimmons and International representatives, the effect of which was to recognize the advisability of a Joint Council No. 7 Committee to deal with matters contained in the appropriate Supplemental Agreement, the local unions decided to remain part of the multiunion bargaining unit covered by the National Master Freight Agreement. Following the aforesaid discussions, nine of the local unions, one of which was Local 70, the Respondent, by its chief officer and director and secretary-treasurer, Al Leishman, signed a document dated December 22, 1969, acknowledging their discussions with Fitzsimmons and which concluded with the following language: (See General Counsel's No. 24)

> Therefore, the undersigned Local Unions herein desire to withdraw their prior request for a separate bargaining unit and remain part of the multi union bargaining unit covered by the National Master Freight Agreement.

Under date of November 24, 1969, the National Freight Industry Negotiating Committee directed letters (General Counsel's 20) signed by Frank E. Fitzsimmons, chairman of the committee, to all employers covered by the National Master Freight Agreement of its "desire to negotiate changes and revisions in the terms and conditions of such agreement—for the contract period commencing April 1, 1970, as provided in Article 37 thereof." (Respondent's Exhibit 5)

Article 37, Section 2 of the 1967-1970 National Master Freight Agreement provides as follows:

> Where no such cancellation or termination notice is served and the parties desire to continue said agreement but also desire to negotiate changes or revisions in this agreement, either party may serve upon the other a notice at least 60 days prior to March 31, 1970, or March 31 of any subsequent contract year, advising that such party desires to revise or change terms or conditions of such agreement.

Preliminary to the commencement of contract negotiations, General Vice President Frank Fitzsimmons, in October 1969, upon the recommendation of each of the National Area Conference directors affiliated with the International designated a number of prominent leaders from each area familiar with the

problems in the respective areas to serve on the National Freight Industry Negotiating Committee. Leaders from the states comprising the Western Conference included the secretary-treasurers of three Teamster locals affiliated with Joint Council 7, namely Alex Leishman from the Respondent Local 70 at Oakland, California, Tim Richardson from Local 85 at San Francisco, and Fred Hofmann from Local 287 at San Jose, California. These three executive officers were named to the Joint Council 7 Committee.

The National Freight Industry Negotiating Committee solicited new contract proposals from the hundreds of locals throughout the United States who had been covered by the National Master Freight Agreement and the appropriate supplements. The committees which included the representatives of Joint Council 7, among whom was Leishman, then boiled these many proposals down to a set of proposals for submission to the TEI at the forthcoming contract negotiations. These boiled down proposals were submitted to a convention of two representatives from each of the hundreds of locals covered by the National Master Freight Agreement, who met at the Palmer House in Chicago, Illinois, on December 8, 1969. The meeting was chaired by General Vice President Frank Fitzsimmons. The representatives attending approved the presentation of these proposals by the National Freight Industry Negotiating Committee at the forthcoming bargaining negotiations with TEI. Among the hundreds of representatives from the various locals who attended this Palmer House meeting was Al

Leishman, Respondent Local 70's secretary-treasurer and principal officer. The first meeting between the National Freight Industry Negotiating Committee and the TEI was held on January 7, 1970, at the Hilton Hotel in Washington, D.C. At this meeting, General Vice President Fitzsimmons read the roster of local unions, approximately 350 in number, represented by the National Freight Industry Negotiating Committee. The TEI in turn presented the list of employers they represented. Included in the list of locals named by Fitzsimmons was the Respondent Local 70. Secretary-Treasurer of Local 70 Alex Leishman attended this united meeting and made no objection to Local 70 being represented by the National Freight Industry Negotiating Committee. The two negotiating parties made an exchange of written proposals, but there were no other negotiations at this first meeting. Leishman, having been appointed a member of the Joint Council 7 negotiating committee, participated in the preparation of the proposals submitted by the National Freight Industry Negotiating Committee to the TEI at the Washington Hilton Hotel on January 7, 1970.

Because of their experience and familiarity with problems in the California area, Gordon Kirby from the CTA and Motor Carrier Officials Lawlor, Preston and Anderson, whose firms were members of CTA, were designated by the TEI to serve on the employer committee, and Hofmann from Local 287, Leishman from Local 70, Richardson from Local 85 and IBT General Organizer King were selected by the National

Committee to serve on the union committee to negotiate changes in the Joint Council 7 Supplemental Agreement. This Joint Council 7 committee met in Washington, D.C., on February 17, 18, 19, 24, 25, and 26, and on March 9, 10, 11, 12, and 13, 1970, to negotiate a Joint Council 7 supplement to the National Master Freight Agreement. As a designated representative, Al Leishman attended all of these meetings and actively participated in the Joint Council 7 negotiations, and through his vigorous representation achieved his position especially on matters which affected the Respondent Local 70, which was affiliated with Joint Council 7.

Except for five monetary items which, under the ground rules only the National Committee could negotiate, the employer and union committees for a Joint Council 7 supplement reached agreement on all other items which they were authorized to negotiate. Accordingly, the Joint Council 7 Supplemental Agreement was memorialized in writing and signed at Washington on March 13, 1970, (General Counsel's 17) by the members of the union and employer committees, including Al Leishman who signed as a member of the union committee. The so-called five "dead-locked" items or "money" items, namely holidays, vacation, health and welfare, pensions, and funeral leave were referred back to the National Committee.

Union and employer negotiators of the Joint Council 7 Supplemental Agreement attended a meeting of the National Negotiating Committee in Washington

on April 17, 1970, to resolve the Joint Council 7 deadlocked items. Leishman attended along with the Joint Council 7 union committeemen. The deadlocked items were resolved by the National Committee. The employer and union negotiators of the National Master Freight Agreement concluded a tentative National Master Freight Agreement on April 2, 1970. Among other changes in the National Master Freight Agreement, the tentative agreement provided for a general wage increase of $1.10 per hour during the contract term, increases in payments to the health and welfare funds, and pension funds, an extra holiday, and improved vacation benefits.

Sometime in the latter part of April or early May 1970, the terms of the tentative agreement, and its appropriate supplements (General Counsel's 25, 25(a), 25(b), and 25(c) were submitted nationwide to the hundreds of thousands of employees covered by the National Master Freight Agreement and their appropriate supplements for approval or rejection. This national referendum was supervised by the U.S. Department of Labor. The balloting resulted in ratification of the tentative agreement. The tentative nature of the agreement was described in the cover letter from General Vice President Fitzsimmons to all involved members as follows:

> PLEASE NOTE: Employers have agreed that this monetary agreement may be reopened for further negotiations by the Union if the employers covered by this agreement enter into a more favorable monetary settlement with local unions

which are not a party to the National Master Freight Agreement.

The Chicago locals which did not belong to the multiunion multiemployer unit were successful in procuring an overall increase of $1.65 per hour over a 3-year contract term. Consequently, as per the tentative agreement, negotiations were reopened on the National Master Freight Agreement on wages in early July 1970 and resulted in an improved wage agreement in which the employer representatives agreed to pay a $1.85 per hour increase during the April 1, 1970, to June 30, 1973, contract term.

Following final settlement of the Joint Council 7 Supplement by the National Committee on April 17, 1970, the union and employer representatives of the Joint Council 7 Committee met on June 19 at the offices of the Western Conference of Teamsters to finalize the language of the Joint Council 7 Supplemental Agreement in keeping with the agreement already reached. Leishman attended this meeting along with other union committeemen. A final meeting of the Joint Council was held on July 29, 1970, at the offices of the Western Conference of Teamsters in Burlingame, where the representatives reviewed the printer's galley proofs and finalized vacation and health and welfare language. Although notified, Mr. Leishman did not attend the July 29 meeting. Joseph Diviny, president of Joint Council 7, signed the Joint Council 7 Supplement August 10, 1970, on behalf of the affiliated local unions, including Local 70. The

president and secretary of CTA signed in behalf of the members who employed persons performing work under the various local unions' jurisdictions.

The various locals affiliated with Joint Council 7, with the cooperation of the CTA, had copies of the Joint Council 7 Supplemental Agreement printed. Respondent Local 70 refused to cooperate in printing of the Joint Council 7 Supplement. Consequently, the CTA alone procured their printing.

Local 70's Renunciation of the National Master Freight Agreement and Strikes and Work Stoppages to Force CTA Members to Bargain Individually

Although the 1967 to 1970 contract, which contained a no-strike clause, had not been terminated, and had been opened only for negotiations of modifications, and despite the absence of an impasse in negotiations, Respondent Local 70 began strike and picketing activity against CTA members in Alameda County on April 1, 1970. This strike activity, picketing and resulting work stoppages affected practically all CTA members in Alameda County whose Teamster employees were represented by Respondent Local 70. Local 70 picketing continued at most carrier terminals during the first 3 days of April 1970. The Alameda County Superior Court of the State of California issued a temporary restraining order enjoining Local 70's strike and picketing; and on April 7, 1970, the aforesaid state court issued a preliminary injunction enjoining Local 70 from picketing and other strike

activity. In support of its preliminary injunction, the Court stated in its order as follows:

> The Court [has] concluded that the strike and work stoppage activity of defendant Local 70 and its agents is presently premature under the procedures for the negotiation of revisions and changes to the collective bargaining agreement of the parties, and that such strike and work stoppage activity is in violation of the agreement of the parties respecting such negotiating procedures.

Respondent Local 70's strike activity in April was carried on without sanction from the International and under date of April 6, 1970, the following telegram was sent to counsel for the CTA by Einar Mohn, International Director Western Conference of Teamsters: (See General Counsel's 7)

> THE FOLLOWING TELEGRAM WAS SENT TO ALL FREIGHT LOCALS AS OF THIS DATE APRIL 6 1970: QUOTE
>
> UNDER ARTICLE 37 OF THE NATIONAL MASTER FREIGHT AGREEMENT AND THE NOTICE GIVEN BY YOUR LOCAL UNION AND THE NATIONAL FREIGHT NEGOTIATING COMMITTEE THE 1967-1970 FREIGHT CONTRACT WAS CONTINUED WHILE THE PARTIES NEGOTIATED FOR REQUESTED AMENDMENTS. ON APRIL 2 THE NATIONAL NEGOTIATING COMMITTEE, AS YOUR DULY AUTHORIZED AGENT UNDER THE INTERNATIONAL CONSTITUTION ENTERED INTO A TENTATIVE AGREEMENT WITH THE EMPLOYERS COVERING THE NATIONAL MASTER FREIGHT AGREEMENT AND MONETARY ISSUES, RETROACTIVE TO APRIL 1, WITH ONLY THE AREA SUPPLEMENTS TO BE COM-

PLETED, INCLUDING YOUR AREA, ALL SUBJECT TO A RATIFICATION VOTE AS PROVIDED BY THE INTERNATIONAL CONSTITUTION. NO LOCAL UNION HAS THE AUTHORITY UNDER THE INTERNATIONAL CONSTITUTION FOR CONDUCT ITS OWN RATIFICATION VOTE ON THIS AGREEMENT. IF YOUR MEMBERS ARE NOT WORKING, YOU ARE INSTRUCTED TO RETURN THEM TO WORK IMMEDIATELY, AND NOT TO TAKE ANY FURTHER ACTION WITH RESPECT TO THE FREIGHT AGREEMENT UNTIL YOU HEAR FROM THIS OFFICE. AS SOON AS NEGOTIATIONS OF THE AREA SUPPLEMENTS ARE COMPLETED YOU WILL BE GIVEN ALL THE NECESSARY INFORMATION TO DISCUSS WITH YOUR MEMBERS AT A UNION MEETING BEFORE THE RATIFICATION VOTE IS CONDUCTED.

During the strike activity in early April 1970, James Muniz, president of Local 70, in a radio interview with the news media, announced that the purpose of the strike was to negotiate a better contract. Muniz referred to the demands of the Chicago locals in the trucking industry in the Chicago area, and he lamented the fact that other areas were now forging ahead of the Bay Area locals who, Muniz stated, once had the prime pickup and delivery contract in the nation.

On May 18, 1970, following the counting of the ballots in the national referendum, it was officially announced by the negotiating parties that the National Master Freight Agreements and all appropriate supplements had been ratified by the membership nationwide.

It was made clear by the conduct of Respondent Local 70 sometime before May 18, 1970, and presumably while the national referendum was being conducted that it was seeking to break away from the multiunion multiemployer bargaining unit and attempting to undertake separate bargaining with CTA motor carriers whose employees it represented.

Thus, under date of May 13, 1970, Local 70 officers Leishman and Muniz directed identical letters to CTA and all its member-employers which read as follows: (General Counsel's 9)

> Enclosed herewith, please find copy of our communication of this date to General Vice President, Frank E. Fitzsimmons, of the International Brotherhood of Teamsters.
>
> We are prepared to negotiate the terms and conditions of an agreement, including supplemental agreement, as you see fit.
>
> Please notify this Local Union immediately of a convenient time and place for negotiations.

The enclosed letter, which was a copy of the May 13, 1970 letter, directed by Local 70 to the International's General Vice President Frank E. Fitzsimmons, read as follows:

> We hereby take this opportunity to notify you that the membership of this Local Union has instructed the officers to determine whether or not they are bound by the terms of the so-called Master Freight Agreement.
>
> We have determined, and our findings are as follows:

1. This Local shall not be and does not consider itself bound by any negotiated terms or conditions of any Supplemental Agreement affecting the territorial jurisdiction or members of Local No. 70.
2. This Local Union was promised and understands that all negotiations were to be conducted, presently and for the future, on the basis of full autonomy to negotiate and by itself to ratify the terms of any such Supplemental Agreement.
3. No extension agreement was ever signed to the knowledge of this Local Union which is binding upon this Local Union and no copy of such extension agreement was ever furnished to this Local Union after the expiration date of the present Master Freight Agreement on or about March 31, 1970.
4. The ratification or voting procedures are completely inadequate, and do not have adequate safeguards and are contrary to any understanding this Local Union has; namely, no separate negotiations and ratification procedures are being conducted on behalf of this Local Union and ballots were sent to individuals who were not employed under any pre-existing Master or Supplemental Agreement, and many members who are employed or were employed under those agreements were not, in fact, sent ballots.
5. It is our belief that a Power of Attorney was required for each new contractual negotiations and no such Power of Attorney was granted by this Local for the 1970 negotiations, and the membership of this Local Union at no time

authorized any officer or agent thereof to execute any such Power of Attorney.

6. It is our desire to fully cooperate with the International Brotherhood of Teamsters and to fully comply with all constitutional and contractual provisions which may be lawfully binding upon us. At the same time, we will exhaust all peaceful legal limits open to us and we will reserve the right to take appropriate action to enforce our lawful demands dealing with the requests of the membership of Local No. 70.

7. In accordance with the above-mentioned principles, we are instructing our members not to return the ballots forwarded to them because we believe that their return would imply that we consider ourselves bound by the negotiations, and we wish to re-emphasize that we do not consider ourselves bound by those negotiations.

If you have any questions or comments, please do not hesitate to call upon us; and because of the urgency of this matter, if we do not hear from you within forty-eight (48) hours, we will assume full agreement with the principles and statements made herein.

In reply to Local 70's May 13, 1970, letter directed to him, General Vice President Fitzsimmons dispatched the following telegram to Local 70 on May 18, 1970:

I HAVE JUST RECEIVED YOUR LETTER DATED MAY 13, 1970, IN WHICH YOU STATED THAT YOU HAVE DETERMINED THAT YOU ARE NOT BOUND BY THE SO-CALLED MASTER FREIGHT AGREEMENT. I AM IN COMPLETE

DISAGREEMENT WITH EVERY REASON STATED FOR SUCH CONCLUSION. YOU ARE CLEARLY BOUND UNDER THE INTERNATIONAL CONSTITUTION AND SINCE THE CONTRACT HAS NOW BEEN APPROVED ANY STRIKE OR OTHER ACTION WHICH YOU MAY TAKE WILL BE IN VIOLATION OF THE CURRENT AGREEMENT. A DETAILED LETTER WILL FOLLOW WITH RESPECT TO THIS MATTER.

The aforesaid May 18 telegram was followed on May 19, 1970, by a letter from General Vice President Fitzsimmons to Secretary-Treasurer Leishman and President Muniz of Local 70. The letter read as follows:

> In response to your letter dated May 13, 1970, I have already wired you as per the attached. In further reply, please be advised as follows:
>
> 1. Under the Constitution of the International Brotherhood of Teamsters, Article XVI, Section 4, and appropriate resolutions adopted by the General Executive Board, the various Supplemental Agreements including the supplemental agreement applicable to Local Union 70 and known as the Joint Council No. 7 Supplemental Agreement, are all part and parcel of the National Master Freight Agreement, are voted up or down with the Master Freight Agreement, and, once accepted, are binding upon all Local Unions and their members.
>
> 2. We have no knowledge of any promise made to Local 70, or of any understandings entered into with Local 70, that Local 70 would have the authority to ratify or reject the Joint Council 7 Supplement by separate vote. No person has been authorized by this office or by the General Execu-

tive Board to enter into any such understanding with Local 70. Such understanding would be in complete violation of the Constitution of the International Brotherhood of Teamsters.

3. There never has been an extension agreement entered into with respect to the 1967-1970 National Master Freight Agreement, since such extension agreement was not necessary. Article 37 of the National Master Freight Agreement for the period from 1967 to 1970 provided the Unions with a right either to terminate or to continue the Agreement and ask for amendments. A decision was made to continue and ask for amendments. The notices which Local 70 was directed to send to its employers, as well as notices which were sent by the National Negotiating Committee and the Western Conference of Teamsters on behalf of Local 70 to Local 70's employers all clearly set forth the intention of the Local Union and the National Negotiating Committee to continue the existing Agreement but to negotiate amendments. That Agreement, therefore, was never terminated and, accordingly, no extension agreement was necessary.

4. The ratification and voting procedures provided for by the International Constitution have previously been challenged in court proceedings and had been sustained as being legal and valid. The actual voting was conducted under the supervision of the United States Department of Labor. There may have been some errors made in the sending of the ballots. If so, this resulted from the failure of the Local Union to provide the International Union with an accurate up-to-date mailing list. Wherever such errors were called to the

attention of the National Negotiating Committee and the U.S. Department of Labor, they were rectified immediately. In any event, the margin of votes favoring the adoption of the Agreement was sufficiently large so that any few errors which may have been made would have had no effect on the outcome of the referendum.

5. No new power of attorney is or was required for the negotiation of the National Master Freight Agreement. Even though powers of attorney were solicited in the past, this was not necessary under the Constitution. The Constitution provides the manner in which Local Unions first determine whether there shall be a national agreement. Once that determination is made, as it was made for the 1964-1967 contract, the Constitution provides a manner in which a Local Union may seek permission to withdraw from the national bargaining unit. Local 70, together with the other Locals in Joint Council 7, at one time did seek such permission to withdraw within the time permitted by the Constitution. However, thereafter all said Locals, including Local 70, by appropriate resolution withdrew said request and specifically agreed to remain part of the national unit. Local 70, therefore, is bound by the provisions of the Constitution relating to the National Agreement.

By reason of all the foregoing, it is clear that Local 70 is a part of the national bargaining unit, and is bound by the national negotiations.

Since the National Master Freight Agreement together with the Joint Council 7 Supplement have now been duly ratified by the membership in accordance with the provisions of the International Constitution, it is my duty to advise you

that Local Union 70 and its members are bound by said Agreement and Supplement, and that any strikes or work stoppages to amend or alter said Agreement and Supplement would be in violation of said Agreements, and unauthorized by the International Union.

Events Following Shortly Before and After the May 18, 1970, Announcement that the Contract Had Been Ratified by the Membership

It was agreed to, and announced, by the employer and union negotiators that monetary items would be retroactive to April 1, 1970, and other provisions would be placed into effect May 18, 1970, the date ratification was announced. Accordingly, many CTA members started placing into effect modified provisions contained in the Joint Council 7 Supplement; in particular the revised seniority clause which lengthened the time period in which a casual employee could obtain seniority status a well as the clause dealing with the revised bidding procedure. Under the new bid procedure, the employees were given the opportunity to bid job classification and shift, but not for routes, which were to be assigned by the employer.

Thus in June 1970, when Transcon Lines, a CTA member, notified Local 70 that it was placing into effect the revised bid procedures set forth in the Joint Council Supplemental Agreement, Leishman and Muniz of Local 70 replied in a letter dated June 11, 1970, as follows:

> In response to your communication of June 9, 1970, we object to the procedure outlined therein and will not tolerate any changes.

> Such changes are not required by any real or imaginary agreement. The document you refer to in the first paragraph of your letter has never been seen by us. If you have any copies signed by a representative of this local union, please forward a copy to us.

When Ringsby Truck Lines, another CTA member, began to place into effect the new bid procedure, Local 70's Business Agent Roy Nunes warned the Ringsby's terminal manager that the terminal would be struck if the new bidding procedure was instituted, and in the following week, Local 70 struck Ringsby for 2 hours until the company agreed to Local 70's demands on the bidding procedure. On this occasion, Nunes told Ringsby that Local 70 would not adhere to the new contract and that Ringsby would have to retain the bidding procedure under the old contract; that Local 70 was not a party to the new contract. Nunes also told Ringsby's terminal manager that Local 70 was going to negotiate or try to negotiate separately with some of the companies, including Ringsby.

The record shows that following the State Court Preliminary Injunction dated April 7, 1970, many of the CTA motor carriers whose employees were represented by Local 70 found themselves being picketed by altered Local 70 picket signs to disguise the identity of Local 70 which was under State Court injunction not to picket or strike. Thus a work stoppage began on May 8, 1970, at the Navajo Freight Lines Terminal in Oakland, a CTA member; the Local 70 picket sign altered to read Local 705 by the addition

of a hand letter "5" after the preprinted "70." On that same day, Local 70's Business Agent Chuck Mack told Navajo Terminal Manager Atchison that "the pickets were there, that Local 70 was going to honor the picket line and that they would not work." Local 70's disguised picketers of Navajo which began on May 8, 1970, continued with interruptions through May 18 or 19; the pickets carrying signs reading Local 705, 208, 457, 104 and 170.[6]

On June 1, 1970, Local 70's business agent Chuck Mack called Navajo Terminal Manager Atchison by telephone and asked what Atchison's intentions were regarding a new contract. Atchison told Mack that Navajo was bound by the National Master Freight Agreement and the supplements and planned to live up to those agreements. Mack replied that Local 70 did not recognize the National Master Freight Agreement or the supplement agreement, that he was going on vacation and he wished Atchison would wait before implementing the new contract until he returned from vacation so he could personally shut Navajo down.[7]

On June 1, 1970, Local 70's business agent Lou Riga met with officials of the Delta Lines, a C.T.A. member, at the Emeryville, California terminal in the presence of three Local 70 union stewards. Riga told

[6]Terminal Manager Atchison phoned a member of the executive board of Local 170, which is a Massachusetts Local, and was told that Local 170 had no dispute with Navajo.

[7]Although Respondent claims that there is no contract, it is ironical to note that Local 70's business agents carry the contracts and are accepting and insisting on all the monetary and other benefits of the National Master Freight Agreement and Joint Council 7 Supplement.

the group that Local 70 was not going to recognize the new supplement or the National Master Freight Agreement, and that he had been instructed by Local 70's president, Muniz, to inform the employer that if the Delta Lines attempted to place into effect either of these agreements, Delta would be struck by Local 70. Delta's director of labor relations, Bacigalupi, replied that as far as Delta Lines was concerned, it was bound by both of the agreements and would live up to them.

On June 15, 1970, Local 70 business agent Leroy Nunes and its president James Muniz visited C.T.A. member, Transcon Lines terminal, and talked to terminal manager Gary Bowen in the presence of five Local 70 union stewards and told him to pull down from the bulletin board the bids that he had posted under the new bidding procedure provided for in the new Joint Council 7 Supplement. Muniz told Bowen he was not to implement any "so-called new agreement, but to abide by the old agreement until such time as Transcon Lines would negotiate with Local 70 directly for a contract." Muniz told terminal manager Bowen that if he didn't pull down the bids and if he attempted to comply with the new supplement, that Local 70 would take positive action against Transcon, and it would be sorry. Muniz also told Bowen that it was harassing all of the carriers to get them to negotiate directly with Local 70 for a contract. The bid sheets were mysteriously removed, without authority, from the company bulletin board, and Bowen made no attempt to post them again in the face of Muniz' threat "to take positive action."

The Encinal terminal at Alameda, California, a C.T.A. member, was harassed by Local 70 picketing with both Local 70 signs and Local 70 altered signs on May 18, 1970. On that same day, Local 70's business agent Leroy Nunes phoned Encinal terminal manager Brosnan and requested amnesty for drivers in Local 208. The letter of amnesty was picked up the following morning by another Local 70 business agent. But on the following day, May 19, picketing continued. Terminal Manager Brosnan phoned Local 70's business agent Larry Diaz and inquired why the pickets had not been removed. Diaz told Brosnan that Local 70 was also requesting amnesty for members of Joint Councils 42 and 7 and ILWU Locals 6 and 10. Brosnan agreed to give the amnesty except as to the ILWU locals because they were with another division of Encinal. Brosnan asked Diaz what would happen if Encinal pulled out of the C.T.A., Diaz replied that Encinal's troubles would be over.

On July 6, 1970, Local 70's business agents Frietas and Sarmento visited the Okland Terminal of the Santa Fe Trail Transportation Company, a C.T.A. member, and engaged terminal manager Crispen in conversation. The two business agents told Crispen that the Company had an employee named Martinez at the Oakland Terminal who had worked 15 days and had established seniority. Crispen replied that the new contract (Joint Council 7 Supplement) which the Company was following stated that the employee's seniority status shall occur when he works 30 days in probationary or a trial basis, hence Martinez had no seniority. Crispen suggested to the two business

agents to take the matter up through the grievance procedure of the contract. The two business agents threatened to picket the terminal. At the end of this conversation, business agent Frietas went out and placed pickets at the terminal, and, as a consequence, the employees walked off the job. The picketing and work stoppage continued during the balance of the week until the following Monday morning. On the morning of July 8, 1970, Local 70's business agent Frietas visited the Santa Fe Oakland Terminal while it was being picketed by Local 70. Frietas told Crispen that if the Company did not stop complying with the new contract, that he would also place pickets at the Santa Fe terminal in Richmond, California, and if it was necessary at the Company's Los Angeles terminal. Crispen again told Frietas to follow the grievance procedure of the contract, but Frietas refused. On that same day, Local 70 also picketed the Santa Fe Richmond terminal.

A work stoppage by Local 70 members employed at the Oakland terminal of the Pacific Motor Trucking Company, a C.T.A. member, began on May 8, 1970. The picketing and work stoppage lasted 10 days. On the first two days, the pickets carried signs marked Local 208 and on subsequent days the signs were changed with crayons to read 104, 170, and other numbers.[8]

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[8]The uncontradicted evidence also shows, and I find, that Local 70 picketed and struck the Oakland terminal of the Pacific Motor Trucking Company in early April 1970 for several days, at which time the Local 70's business agent phoned terminal manager Hellwig and told him Local 70 was "going to close down all the terminals in Oakland because they were not satisfied with the negotitions that were going on."

In keeping with Local 70's strike action against almost all of C.T.A. members in the East Bay area for several days in the first part of April 1970, Local 70 also picketed and struck the Oakland Terminal of DiSalvo Truck Lines with the use of Local 70's signs altered to read 170 in the period May 16 to May 18, 1970. Additionally, in late June or early July 1970, Local 70's business agent Dick Sarmento ordered DiSalvo's president, Charles J. Lawlor, to remove from the company bulletin board a bid sheet following the bid procedure of the new Joint Council 7 Agreement. When Lawlor phoned Sarmento and told him he was not going to remove the bulletin, Sarmento threatened to close down the DiSalvo Truck Lines; and Sarmento came over to the Oakland Terminal of DiSalvo and pulled the bid sheet off the bulletin board.

Analysis and Conclusion Concerning Respondent Local 70's Conduct since April 1, 1970

It is established without contradiction, and in fact is admitted by the Respondent's answer, that at all times since April 3, 1970, it has refused to accept and be bound by the terms of the National Master Freight Agreement and its supplement applicable to members affiliated with Joint Council 7, including Respondent Local 70. I find that as a member of the multiunion-multiemployer group, the Respondent was bound by the agreements of the National Freight Industry Negotiating Committee and the Joint Council 7 Committee. As a member of the multi-bargaining group, the Respondent's acts disavowing its obliga-

tions as a member of the multi-union group, coming after negotiations for a new contract had been all but completed, was untimely under Board and Court law. The conduct of the Respondent in renouncing and refusing to be bound by negotiations of its representatives thereby constituted a refusal to bargain in violation of Section 8(b)(3) of the Act.

Additionally, the evidence is uncontradicted that the Respondent in early April 1970 struck and picketed and/or threatened to strike almost all of the C.T.A. members whose employees represented by Local 70 were covered by the National Master Freight Agreement and Joint Council 7 Supplement and struck and picketed, among others, bargaining unit C.T.A. members, Transcon Lines, Delta Lines, Navajo Freight Lines, Pacific Motor Trucking, Ringsby System, DiSalvo Trucking Company, and Santa Fe Transportation Company on various dates above recited in greater detail in April, May and June 1970, for an objective of forcing C.T.A. bargaining unit employers to bargain with them individually and break away from the multiemployer unit.

I find that the above-described conduct of the Respondent Local 70, by its officers, agents, and members, in engaging in strikes, picketing, work stoppages and in threats thereof, in concert with other labor organizations against C.T.A. member employers, who belonged to the multi-bargaining unit, and who were hence bound by the negotiations of their group representative, C.T.A. and T.E.I., restrained and coerced the aforesaid employers in the selection of

their representatives for the purpose of collective bargaining or the adjustment of grievances within the meaning of Section 8(b)(1)(B) of the Act,[9] and constituted a refusal to bargain in violation of Section 8(b)(3) of the Act.[10]

Respondent Local 70's Status as a Member of the Multiunion-Multiemployer Bargaining Unit

The record discloses without contradiction that Respondent Local 70 became a part of the multiunion-multiemployer bargaining unit in the negotiations for the 1964-1967 and the 1967-1970 contracts. In those negotiations, Local 70 together with hundreds of other locals expressly authorized the National Over-the-Road and City Cartage Policy and Negotiating Committee, appointed by the International, to represent them in collective bargaining with the employer group. Contracts were consummated which the Respondent concedes were binding on them. Negotiations for a 1970 to 1973 agreement began no later than January 7, 1970, and were practically consummated on April 2, 1970. But the Respondent made no unequivocal move to disassociate itself from the multiunion unit until it notified the C.T.A. employer-members and the International by its letters of May 13, 1970, of its withdrawal from the unit. The withdrawal, made after collective-bargaining negotiations

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[9] *Hoisting & Portable Engineers Local 701, etc.*, 141 NLRB 469; *Ice Cream, Frozen Custard, Etc., Teamsters Local 717*, 145 NLRB 865; *Local 294, International Brotherhood of Teamsters*, 126 NLRB 1, enfd. 284 F.2d 893, 896 (C.A. 2); *United Association of Journeymen, etc., Local 525*, 135 NLRB 462, 471.

[10] *Ibid.*

had begun and were all but completed, was untimely and violated Section 8(b)(3) of the Act. Although the Respondent executed no power of attorney to the National Freight Industry Negotiating Committee to negotiate the 1970-1973 contract as it did in the negotiations culminating in the 1964-1967 and 1967-1970 contracts, it took no unequivocal action to withdraw prior to the commencement of negotiations. On the contrary, it manifested a clear intention to remain in the multiunion-multiemployer bargaining unit by its action of December 22, 1969, in acknowledging in writing that it was not withdrawing from the bargaining unit. Moreover, its May 13, 1970, withdrawal was in contravention of the International Constitution by which it was bound and by the terms whereof it was prohibited from withdrawing from the bargaining unit "except upon 6 months notice and for good cause shown . . . approved by the General Executive Board of the International Union." But even if no effect were to be given to the International's constitutional provision relating to withdrawal from the bargaining unit, it would be sufficient to conclude that Respondent Local 70 was a member of the multiunit and its withdrawal was untimely and, therefore, in violation of the Act under Board and Court law. *Field and Sons, Inc.*, 189 NLRB No. 59; *Intercity Petroleum Marketers, Inc.*, 173 NLRB 1420; *N.L.R.B. v. Sheridan Creations, Inc.*, 357 F.2d 245 (C.A. 2, 1965); *Hearst Consolidated Publications, Inc.*, 156 NLRB 210; *Retail Associates, Inc.*, 120 NLRB 388; *Publishers Association of New York City, et al., v. N.L.R.B.*, 364 F.2d 293 (C.A. 2, 1966);

Anderson Lithograph Co., 124 NLRB 920, enfd. *sub nom. N.L.R.B. v. Jeffries Banknote Co.*, 281 F.2d 893 (C.A. 9, 1960); *Detroit Window Cleaners Union*, 126 NLRB 65; *Milk & Ice Cream Dealers of Greater Cincinnati*, 94 NLRB 23; *York Transfer & Storage Co.*, 107 NLRB 139.

The ground rules for withdrawal from a multi-employer-multiunion bargaining unit were set forth by the Board in *Retail Associates, Inc.*, 120 NLRB 388, at page 395, where it spoke as follows:

> We would accordingly refuse to permit the withdrawal of an employer or a union from a duly established multiemployer bargaining unit, except upon adequate written notice given prior to the date set by the contract for modification, or to the agreed-upon date to begin the multiemployer negotiations. Where actual bargaining negotiations based on the existing multiemployer unit have begun, we would not permit, except on mutual consent, an abandonment of the unit upon which each side has committed itself to the other, absent unusual circumstances. It is clear that under the ground rules to be promulgated, we would reach the same result as found in the present case.

In *The Evening News Association, Etc.*, 154 NLRB 1494, the Board recognized the right of a labor organization to withdraw from multi-bargaining in the same manner and to the same extent as had been granted to employers, namely that the withdrawal be unequivocal and timely, that is before the agreed-upon date to begin the multiemployer negotiations.

In the instant case, it is clear that Local 70's withdrawal was untimely.

In *N.L.R.B. v. Sheridan Creations, Inc.*, 357 F.2d 245, at page 248, the Second Circuit expressed its agreement with the Board's ground rules for withdrawal from a multi-bargaining unit as follows:

> Multi-employer bargaining is based on the consent of the parties to treat with one another through the agreed units. A shift in membership after negotiations have begun has lively possibilities for disrupting the bargaining process. In a case such as this, good faith withdrawal of a small unit might in practice have minimal or no effect. However, the potential for disruption is sufficient to justify the Board in adopting a uniform rule for all cases that withdrawal is not timely once bargaining has begun. We cannot say that no such potential exists, or that its incidence would be so infrequent that the Board's judgment that the uniform rule is needed is without a reasonable foundation or arbitrary in nature.

The Respondent's May 13, 1970, Letter to the International and the International's May 19, 1970, Reply to Letter

The Respondent's May 13, 1970, letter to International General Vice President Frank E. Fitzsimmons, asserting justification of its refusal to be bound by the terms of the 1970 to 1973 National Master Freight Agreement, expresses in part the same defenses that the Respondent Local 70 asserts in this case. Inasmuch as the content of the Respondent's May 13, 1970, letter have been set forth earlier in this decision, I

will not repeat it here. It is sufficient to note that International General Vice President Fitzsimmons' reply letter of May 19, 1970, convincingly refutes the contentions made in the Respondent's May 13, 1970, letter. The facts and arguments set forth in Mr. Fitzsimmons' May 19 reply letter are amply supported by the record in this case, and the Respondent's assertion in its May 13, 1970, letter that it was to have full autonomy in the negotiation of a supplemental agreement and that the ratification or voting procedures were inadequate and contrary to their understanding, does not have support in the record. I am in total agreement with the statement of facts and legal conclusions in Mr. Fitzsimmons' May 19 reply letter to the Respondent.

The Existence of a Signed Agreement

Although the Respondent's May 13, 1970, letter to International General Vice President Fitzsimmons conceded, by implication, the existence of a National Master Freight Agreement and a Joint Council 7 Supplement, its refusal to be bound by the terms thereof were not grounded on a contention that there was no signed agreement. But during the hearing, Respondent's counsel contended there was an absence of evidence that the National Master Freight Agreement or the Joint Council 7 Supplement had ever been signed. The Respondent's brief on this point closes with the following contention:

> Inasmuch as the General Counsel has yet to produce an executed bargaining agreement, setting forth the terms and conditions which he now

seeks to enforce against Local 70, it is respectfully submitted that there has been a failure of proof and the General Counsel has failed to meet his burden.

The Respondent's contention aforesaid, I conclude, is without merit. There is overwhelming and uncontradicted evidence in the record as to the terms of both the National Master Freight Agreement and the Joint Council 7 Supplement. The terms of these contracts may be found in the following documents in the record: The Joint Council 7 Supplement (General Counsel's Exhibit No. 17) signed March 13, 1970, by all of the members of the employer committee and the union committee, including the signatures of Mr. Al Leishman, Local 70's secretary-treasurer; the Joint Council 7 Supplement in completed form (General Counsel's Exhibit No. 18) signed by Joint Council 7 President Joseph J. Diviny and by CTA executive officers on August 10, 1970, acknowledging that the agreement had in fact been signed by March 13, 1970, by the Joint Council 7 Committee. Other documents evidencing the terms of the Joint Council 7 Agreement are in evidence as General Counsel's Exhibit Nos. 36 and 37. General Counsel's Exhibit No. 36 is the working guide showing all language changes in the Joint Council 7 Supplement and was used as a ready reference until the contract was finally printed in booklet form. General Counsel's Exhibit No. 37 is the printed booklet containing the complete terms of the Joint Council No. 7 Local Pickup and Delivery Supplemental Agreement for

the period April 1, 1970, to June 30, 1973, which I find is binding on Local 70 as fully as if Local 70 had signed it, and I find that Local 70 officials are required by the Act to sign it, if requested. See Section 8(d) of the Act; also *H. J. Heinz Co. v. N.L.R.B.*, 311 U.S. 514; 61 S. Ct. 320.

Evidence that the National Master Freight Agreement was executed by the employer and union members of the National Committee is found in General Counsel's Exhibit No. 19, as well as in the printed booklet that is circulated nationwide and is the National Master Freight Agreement for the contract term April 1, 1970, to June 30, 1973. This printed booklet is found in the record marked General Counsel's Exhibit No. 26, and on page 81 thereof bears the printed names of the national negotiators for the employees and for the employers. Additional evidence of the terms of both the National Master Freight Agreement and the Joint Council 7 Supplement may be found in the material sent out to the hundreds of thousands of Teamster members throughout the nation setting forth the terms of the new National Master Freight Agreement and the appropriate Joint Council Supplement mailed to the affected employees in the national referendum conducted under the supervision of the United States Department of Labor in late April and early May 1970. These documents setting forth the contract terms of both the National Master Freight Agreement and the Joint Council 7 Supplement are found in the record as General Counsel's Exhibits 25, 25a,

25b, and 25c; and on May 18, 1970, it was officially announced that the members in nationwide balloting had ratified the contracts.[11]

But aside from the fact that there is uncontradicted evidence in the record of executed contracts, the Act does not require that a collective-bargaining agreement be in writing or executed by the parties. In *Hamilton Foundry Co. v. Foundry Workers,* 193 F.2d 209 (C.A. 6, 1951), cert. denied 343 U.S. 966, it was held that a contract may be validly entered into even though the written instrument evidencing the terms of the contract has not been executed by the parties. Accord *Rabovin v. N.L.R.B.,* 195 F.2d 906 (C.A. 2, 1952); *Roadway Express Inc. v. General Teamsters, etc., Local 249,* 330 F.2d 859 (C.A. 3, 1964).

In *Rabovin, supra,* the Court stated the law as follows: "There is nothing in the Act which compels the conclusion that collective bargaining contracts must be firmly attested by the parties; rather Section 8(d), codifying the rule of *H. J. Heinz, Co. v. N.L.R.B.,* 311 U.S. 514, 61 S. Ct. 320, specifically provides for a written agreement 'if requested by either party'—clear evidence that a writing is not mandatory as a matter of law."

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[11]As I have found earlier in this Decision, ratification of the agreement was made with the understanding that if the Chicago locals, who were not part of the multibargaining unit, were able to secure a larger wage package than the multigroup had negotiated, wages could be reopened for further negotiation. As I have found earlier in this Decision, negotiations for a larger wage package were reopened following the success of the Chicago locals which were not in the bargaining unit, and as a result of additional negotiations in July 1970, an increased wage package was negotiated by the national negotiators.

From a practical standpoint, it is significant to note, and cannot be overlooked, that all of the other local unions affiliated with Joint Council 7 have fully accepted and have acknowledged themselves bound by the terms of both the National Master Freight Agreement and the Joint Council 7 Supplement. Only Local 70 contends that it is not bound; but with apparent inconsistency, it accepts and insists on all of the benefits, monetary and otherwise, which flow from the contract terms; and although the Respondent at the hearing contends there is no contract, still Local 70 business agents are known to carry with them copies of the National Master Freight Agreement and the Joint Council 7 Supplement.[12]

The Role of Al Leishman as a Member of the National Freight Industry Negotiating Committee

As I have found earlier in this Decision, Mr. Al Leishman, Local 70's secretary-treasurer and the principal executive officer of that local, was designated by General Vice President Frank E. Fitzsimmons, upon the recommendation of Einar Mohn, the director of the Western Conference of Teamsters, to serve on the negotiating committee. Appropriately, Leishman was designated to serve on the Joint Council 7 Committee which negotiated the Local 7 Sup-

[12]Under date of July 9, 1970, a Temporary Restraining Order issued by the United States District Court of the Northern District of California against Local 70, upon application of the Board's Regional Director for Region 20, pursuant to Section 10(j) of the Act. On July 20, 1970, the restraining order was continued in force and effect by the Court.

plement Agreement with which Joint Council Local 70 and approximately eight other locals were affiliated. Leishman, together with Mr. Tim Richardson, secretary-treasurer of Local 85 in San Francisco, and Mr. Fred Hoffman, secretary-treasurer of Local 287 in San Jose, were the only three officials selected from the approximately nine locals comprising Joint Council 7. They were selected because of their knowledge, experience and skills and because they were executive officers of large and powerful locals in the Bay Area.

Mr. Muniz testified that Local 70 had never authorized Leishman to represent it in negotiations and did not authorize Joint Council 7 to bargain in its behalf. Muniz also testified that Local 70 did not authorize Mr. Joseph Diviny, president of Joint Council 7, to execute the Joint Council 7 Supplemental Agreement.

Presumably, Mr. Muniz means to state that no formal action was taken by the Local 70's membership resulting in the preparation in each instance of a formal document expressly granting the authority to Leishman, to Joint Council 7 or to Mr. Diviny, its president.

Section 2(13) of the Act provides, however, that: "In determining whether any person is acting as an agent of another person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling."

It is clear that Local 70 acquiesced in Mr. Leishman's role as a member of the National Freight

Industry Negotiating Committee and his role in negotiating the Joint Council 7 Supplemental Agreement. Local 70 acquiesced in his signing the December 22, 1969 document (General Counsel's Exhibit No. 24) along with other Joint Council 7 affiliated local unions acknowledging their membership in the multiunion-employer group and made no move to disclaim it while bargaining proceeded through the months of January through April 1970. It permitted Leishman to attend the several prenegotiation conferences in 1969 concerned with collating and boiling down union proposals to be submitted to the employer group. It permitted him to actually participate as a member of the negotiating committee to bargain the terms of the Joint Council 7 Supplemental Agreement which was to be binding on all of its affiliated locals, including Local 70, a procedure which demanded Leishman's presence in Washington through much of January, February, and March and in April 1970. During all of this activity on the negotiating committee, Mr. Leishman's salary was paid by the Local 70 as well as his expenses. Moreover, Local 70 President James Muniz also attended the March 31, 1970, negotiations in Washington and gave a report to the membership on the status of the negotiations.

But even if Leishman had not been selected by General Vice President Fitzsimmons to serve on the negotiating committee for a National Master Freight Agreement and Joint Council 7 Supplement, I would nevertheless find, under the facts in this case, that Local 70 was part of the multiunion-multiemployer

bargaining unit and hence bound by the 1970-1973 National Master Freight Agreement and its Joint Council 7 Supplement. In this connection, it is pointed out that approximately six of th local unions affiliated with Joint Council 7 were unrepresented by committeemen from their respective local unions. Yet, they correctly considered themselves bound by the negotiated agreements because of their membership in the multiunion-multiemployer bargaining unit. I have concluded that Local 70 enjoyed no different status than the other local unions affiliated with Joint Council 7 and that Local 70 was bound by the negotiated agreements just as they were. But inasmuch as Local 70 had its chief executive officer, Leishman, present in Washington, and who actively and effectively participated in the negotiations and who made it a point especially to advance the interests of Local 70 in the negotiation of the Joint Council 7 Supplement, there is even greater reason to bind Local 70 with the results of the bargaining.

The Existence of Minor Variations in Contract Terms at the Local Level Does Not Destroy the Multiunion-multiemployer Bargaining Unit

The existence of slight variations in the contract terms between some of the affiliate locals of Joint Council 7 does not destroy the multiunion-multiemployer bargaining unit.

It is clear, and I have found, that at least since 1964 there has been a national multiunion bargaining

unit of which Local 70 has been a part, by reason, among other things, of its affiliation with Joint Council 7 and also with the International, by whose constitution it is bound. Since 1964, all agreements nationwide have been merged into the National Master Freight Agreement and its several supplements throughout the nation. These supplements, together with the National Master Freight Agreement, constitute a single contract covering the trucking industry. This fact is clearly stated at Article 2, Section 2 of the National Master Freight Agreement, providing in part as follows: (See General Counsel's Exhibit Nos. 2 and 26 for the years 1967-70 and 1970-73 respective.)

> There are several segments of the Trucking Industry by this agreement, and for this reason, supplemental agreements are provided for each of the specific types of work performed by the various classifications of employees controlled by this Master Agreement.
>
> All such Supplemental Agreements are subject to and controlled by the terms of this Master Agreement and are sometimes referred to herein as Supplemental Agreements.

It is not disputed that with respect to some local unions affiliated with Joint Council 7, there are differences in health and welfare plans, Saturday work, overtime and other matters. These differences are historical variations that prevailed before joint bargaining, and it was agreed and understood that these historical variations at the local level would not be prejudiced by group bargaining. Thus, Article 2, Sec-

tion 5 of the National Master Freight Agreement (General Counsel's Exhibit No. 26) provides:

> Riders or Supplements to this agreement providing for better wages, hours and working conditions, which have previously been negotiated by Local Unions and Employees affected and put into effect, shall be continued. No new Riders or Supplements to this Agreement shall be negotiated by any of the parties hereto except in those instances agreed to by the parties hereto.

Article 6, Section 1 of the National Master Freight Agreement also provides in part:

> The Employer agrees that all conditions of employment in his individual operation relating to wages, hours of work, overtime differentials and general working conditions shall be maintained at not less than the highest standards in effect at the time of the signing of this Agreement—

Allowance for historical differences may be found in the Joint Council 7 Supplemental Agreement to the National Master Freight Agreement 1967-1970 at Article 60 of the Supplemental Agreement which reads as follows:

> All past practices existing between the Employer and the Local Union established prior to July 1, 1961, shall remain in force and effect, except as nullified or changed in this agreement from the agreement which was in effect June 30, 1961.

The Joint Council 7 Supplemental Agreement for the period April 1, 1970 to June 30, 1973 (General Counsel's Exhibit No. 37) contains the following language on "Past Practices" at Article 62:

> Within 60 days of the issuance of this Supplemental Agreement to the affected Unions and the Employers, all past practices mutually agreed to shall be reduced to writing and signed by said Employer and signed by said Employer and Local Union. Failure of the parties to comply with this requirement shall result in the alleged practice becoming null and void. Any and all existing Agreements will be subject to renewal approval in writing by both parties within the 60 day period named.

It is well settled by Board precedent that the existence of local differences does not operate to destroy the multibargaining unit. See for example *The Kroger Co.*, 148 NLRB 569, where the Board in holding a multiemployer unit to be appropriate, notwithstanding a history of individual adjustments, said as follows:

> Petitioner further contends that the history of individual adjustments negates the establishment or existence of a multiemployer unit. We do not agree. The necessary implication of this argument is that in multiemployer bargaining a union and an individual employer member of the group are automatically precluded from negotiating separately on limited matters of peculiar concern to the individual employer, unless such employer withdraws from the group. This is patently unrealistic. The problems of each member of a multiemployer group are understandably not always identical. While it may be to the best interest of the employers and labor organizations involved to bargain as a group about all matters of general concern—the obvious reason for the

> formation and continuation of any multiemployer unit—it may likewise be in the best interest of all concerned not to burden the group negotiations with the limited problems of an individual employer. Hence, we do not believe that the exercise of a mutually recognized privilege to bargain individually on limited matters, as in the present case, is inconsistent with the concept of collective bargaining in a multiemployer unit. . . .
>
> * * *
>
> The fact that in past bargaining over a 17-year period 14 limited individual adjustments arose from apparently dozens of agreements, all of which were jointly negotiated, does not, in itself, establish a future unequivocal intent not to be bound by group action generally.

In this respect the situation here is not unlike the one where bargaining in a multiplant unit leaves certain matters for local determination at each separate plant. Cf. *General Motors Corporation, Cadillac Motor Car Division,* 120 NLRB 1215, 1220-1221 and cases cited in footnote 10 thereof. See also *Radio Corporation of America,* 135 NLRB 980, where the Board in dismissing an 8(a)(5) case against RCA found that RCA had not refused to bargain with a newly certified local of the IBEW by insisting that both parties were bound by the national agreement, even though "such important issues as rates of pay, work to be performed and area craft rates were left to negotiation in the local agreement."

Local 70 conduct, in (1) renouncing and refusing to be bound by the National Master Freight Agree-

ment and its Joint Council 7 Supplement, (2) in demanding individual bargaining of CTA members, (3) in striking and picketing to compel individual bargaining from such CTA members in derogation of their collective-bargaining representatives and (4) in negotiating separate and different contracts with some CTA employer-members in derogation of the National Master Freight Agreement and its Joint Council Supplement,[13] thereby violated Section 8(b)(1)(B) and (3) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce

The activities of the Respondent set forth in section III, above, occurring in connection with the operations of the TEI and CTA and its members, described in section I, above, have a close, intimate and substantial relation to trade, traffic and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

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[13]Only one of the separate "contracts" which Mr. Muniz testified he negotiated with an individual CTA employer-members is in evidence. It is General Counsel's Exhibit No. 26 and reads as follows:

> Frank's Trucking agrees to negotiate a local pickup and delivery agreement with Teamsters Local 70 of the National Brotherhood of Teamsters.
>
> If it is finally determined that Local 70 is party to National Master Freight Agreement, or if Local 70 agrees that it is party to the National Master Freight Agreement, then, at that time, any agreement that may have been negotiated between Frank's Trucking and Local 70 shall become null and void.

V. The Remedy

Having found that the Respondent has violated Section 8(b)(1)(B) and 8(b)(3) of the Act, I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Upon the basis of the foregoing findings of fact, and upon the entire record in this proceeding, I make the following:

Conclusions of Law

1. Respondent, Local 70, is a labor organization within the meaning of Section 2(5) of the Act.

2. TEI, CTA and its employer-members named in Appendix A attached hereto, and each of them are employers engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

3. Respondent represents, and at all times material herein has represented, a majority of the truckdrivers and helpers employed by employer-members of CTA, named in Appendix A hereto attached, within the Respondent's geographical jurisdiction.

4. Respondent Local 70 at all times material herein was and is a member of a multiunion-multiemployer bargaining unit in which the multiunion group was represented in collective bargaining by the National Industry Freight Negotiating Committee affiliated with the International Brotherhood of Teamsters; and the multiemployer unit consisted, among others, of

TEI, CTA and its employer-members named in Appendix A attached hereto; and the aforesaid multi-union-multiemployer bargaining unit is a unit appropriate for the purposes of collective bargaining within the meaning of the Act.

5. By refusing to be bound by the National Master Freight Agreement and the Joint Council 7 Pickup and Delivery Supplemental Agreement for the contract term April 1, 1970, to June 30, 1973, which had been negotiated for the aforesaid appropriate bargaining unit, the Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(b)(3) of the Act.

6. By demanding separate and individual bargaining with each of the CTA employer-members named in Appendix A and by striking and picketing some of them for the purpose of breaking them away and separating them from the multiemployer bargaining unit, the Respondent has restrained and coerced, and is restraining and coercing, employers in the selection of their representatives for the purposes of collective bargaining or the adjustment of grievances in violation of Section 8(b)(1)(B) of the Act, and has refused to bargain in violation of Section 8(b)(3).

7. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the foregoing findings of fact and conclusions of law, and upon the entire record, and pursuant to

Section 10(c) of the Act, I hereby issue the following recommended:[14]

ORDER

Respondent, its officers, agents, and representatives shall:

1. Cease and desist from:

(a) Refusing to give full force and effect to the National Master Freight Agreement and its Joint Council 7 Local Pickup and Delivery Supplemental Agreement for the contract term April 1, 1970 to June 30, 1973.

(b) Recognizing or giving force and effect to individual contracts negotiated with separate employer-members of CTA.

(c) Requesting and demanding, and seeking separate bargaining and collective-bargaining agreements from the CTA employer-members listed on Appendix A attached hereto and from any other employer-members of the CTA who belong to the multiemployer group represented by CTA and TEI.

(d) Picketing, striking, and threats thereto, restraining and coercing CTA employer-members named in Appendix A attached hereto, in the selection of

[14]In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

their representatives for the purposes of collective bargaining or the adjustment of grievances.

2. Take the following affirmative action which is designed to effectuate the policies of the Act:

(a) Notify in writing the CTA and each of its employer-members named in Appendix A attached hereto that it will adhere to and be bound by the terms of the National Master Freight Agreement and its Joint Council 7 Local Pickup and Delivery Supplemental Agreement for the contract term April 30, 1970 to June 30, 1973, and sign said agreements upon request.

(b) Notify in writing all CTA employer-members named in Appendix A with whom it has negotiated separate agreements that they are null and void, and the Respondent will cease giving effect to them.

(c) Post at its union offices in Oakland, California, and distribute to its membership by mail or other means, copies of the attached notice marked "Appendix B."[15] Copies of said notice, to be furnished by the Regional Director for Region 20, after being duly signed by a representative of the Respondent, shall be posted immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in con-

[15]In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

spicuous places, including all places where notices to its members are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Deliver to the Regional Director for Region 20 signed copies of said notice in sufficient numbers to be posted by each of the CTA employer-members named in Appendix A attached hereto, at their places of business, if said employers are willing.

(e) Notify said Regional Director, in writing, within 20 days from the date of receipt of this Decision, what steps Respondent has taken to comply herewith.[16]

Dated:

/s/ Herman Corenman
Herman Corenman
Trial Examiner

[16]In the event that this recommended Order is adopted by the Board after exceptions have been filed, this provision shall be modified to read: "Notify the Regional Director for Region 20, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith."

Appendix A

CTA Members For Whom We Hold Authorization To Represent
Covering
Local 70 Pickup & Delivery Supplemental Agreement

A & B Garment Delivery of
San Francisco, Inc.
Alltrans Express California, Inc.
Associated Freight Lines
Atlas Freight Lines
Atthowe Transportation Co.

Beekman Express &
Warehouse Co.
Bigge Drayage Co.

C-Line Express, Inc.
California Motor Transport Co.
Camall Trucking, Inc.
Coast Drayage dba
Coast Lines
Consolidated Freightways
Corporation of Delaware
Crescent Truck Lines

Ronald L. Day
Transportation Co.
Delta Lines, Inc.
Di Salvo Trucking Company

East Bay Drayage &
Warehouse Co.
Encinal Terminals
Enterprise Transport Company

Frank's Trucking
Fraser Trucking Co., Inc.

Garrett Freightlines, Inc.

Haslett Company
Hills Transportation Company,
a subsidiary of
Containerfreight Corporation

IML Freight, Inc.
Illinois-California Express, Inc.

L & V Trucking, Inc.
Lodi Truck Service

M & N Truck Line
Manufacturers Distribution
Terminal
March Transport Co.

Moore Truck Lines
Morris Draying Company

Navajo Freight Lines, Inc.
Northwestern Drayage
& Warehouse

O.N.C. Motor Freight System

Pacific Intermountain
Express Co.
Pacific Express
Transportation
Pacific Motor
Trucking Company
Peters Truck Lines

Ringsby-Pacific, Ltd.
Ringsby Truck Lines, Inc.
Ruddway Drayage, Inc.

Safe Transportation
Company
The Santa Fe Trail
Transportation Company
Security Transportation
Company
Senna Trucking Co., Inc.
Shippers Express Company
Sterling Transit Co., Inc.
Stewart Drayage Lines
System 99

T.I.M.E.-DC, Inc.
Transcon Lines
Tri-County Freight

United Truck Line

Valley Copperstate System

Walton Drayage &
Warehouse Co., Inc.
Warren Transportation Co.
Wells Cargo, Inc.
Western Gillette, Inc.
Willig Freight Lines

Yellow Freight System, Inc.

Appendix B

Notice to Employees and Members Posted by Order of the National Labor Relations Board An Agency of the United States Government

We Will Not refuse to abide by and give full force and effect to the National Master Freight Agreement and its Joint Council 7 Local Pickup and Delivery Supplemental Agreement for the contract term April 1, 1970 to June 30, 1973, and we will sign the same on request.

We Will Not request, demand, or seek a separate collective-bargaining agreement from CTA employer-members named in Appendix A attached to and made a part of the Trial Examiner's Decision or from any other employers belonging to the multiunion-multiemployer bargaining unit involved in this case.

We Will Not recognize or give force, effect, or validity to individual contracts negotiated by us with separate employer-members of CTA who are named in Appendix A attached to the Trial Examiner's Decision or with separate employers who are part of the multigroup bound by the National Master Freight Agreement and its Joint Council 7 Local Pickup and Delivery Supplemental Agreement.

We Will Not by strikes, picketing, or threats thereof, restrain or coerce the CTA employer-members named

in Appendix A attached to the Trial Examiner's Decision or any other CTA employer-member who belongs to the multiemployer group, in the selection of their representatives for the purposes of collective bargaining or the adjustment of grievances.

We Will notify in writing the CTA and each of its employer-members named in Appendix A attached to the Trial Examiner's Decision that we will adhere to and are bound by the terms of the National Master Freight Agreement and its Joint Council 7 Local Pickup and Delivery Supplemental Agreement for the contract term April 1, 1970 to June 30, 1973.

We Will notify in writing all CTA employer-members named in Appendix A attached to the Trial Examiner's Decision with whom we have negotiated separate collective-bargaining agreements, that they are null and void and that we will cease giving effect to them.

Brotherhood of Teamsters &
Auto Truck Drivers Local No.
70, International Brotherhood
of Teamsters, Chauffeurs,
Warehousemen & Helpers of America
(Labor Organization)

Dated ..... By .....
(Representative) (Title)

This Is an Official Notice and
Must Not Be Defaced by Anyone

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this Notice or compliance with its provisions, may be directed to the Board's Office, 13050 Federal Building, 450 Golden Gate Avenue, Box 36047, San Francisco, California, 94102, Telephone Number: 556-0335.

United States Court of Appeals
for the Ninth Circuit

National Labor Relations Board, Petitioner, vs. Brotherhood of Teamsters and Auto Truck Drivers, Local No. 70, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Respondent, and California Trucking Association, Inc., Intervenor.	No. 72-1498

[December 4, 1972]

PETITION TO ENFORCE AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Before: DUNIWAY and TRASK, Circuit Judges, and TALBOT SMITH, Senior District Judge.*

Per Curiam:

The Board's Order before us was based upon its finding that respondent union had violated Sections 8(b)(3) and 8(b)(1)(B) of the National Labor Relations Act, as amended, 29 USC §151, *et seq.* It was

*The Honorable Talbot Smith, Senior United States Judge for the Eastern District of Michigan, sitting by designation.

the determination of the Board that the respondent union, a member of a multi-union-multi-employer unit, had unlawfully refused to bargain by refusing to be bound by the negotiations of its representatives, such action "coming after negotiations for a new contract had been all but completed."[1] It had, moreover, it was found, by strikes, picketing, and threats thereof, sought to compel employer-members of the unit to abandon the unit and to execute separate collective bargaining agreements.

The offenses charged do not turn upon the existence or non-existence of a new national agreement, whether signed or unsigned, executed or executory, but rather upon the attempted withdrawal from the unit under the circumstances described and the concomitant restraint and coercion practiced. See NLRB v. Jeffries Banknote Co., 281 F.2d, 893 (CA 9, 1960); NLRB v. Hart, 453 F.2d 215 (CA 9, 1971).

We have reviewed the record and find substantial support therein to support the Board's factual determinations. The Petition of Enforcement is therefore granted and the Board's Order will be enforced.

[1] 187 NLRB No. 733. The Board's Decision and Order is

United States Court of Appeals
for the Ninth Circuit

No. 72-1498

National Labor Relations Board,
Petitioner,
vs.
Brotherhood of Teamsters and Auto Truck Drivers, Local No. 70, etc.,
Respondent,
and
California Trucking Association, Inc.,
Intervenor.

[Filed Jan. 19, 1973]

Before: DUNIWAY AND TRASK, Circuit Judges, and TALBOT SMITH, District Judge

ORDER

The petition for reconsideration, which was received late by the Clerk, may be filed. The motion for leave to file opposition to the petition is granted. The petition for reconsideration is denied.

United States Court of Appeals
for the Ninth Circuit

No. 72-1498

National Labor Relations Board, Petitioner,

vs.

Brotherhood of Teamsters & Auto Truck Drivers Local No. 70, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Respondent,

and

California Trucking Association, Inc., Intervenor.

[Filed Dec. 20, 1972]

JUDGMENT

Before: DUNIWAY and TRASK, Circuit Judges, and TALBOT SMITH, Senior District Judge.*

This Cause came on to be heard upon the application of the National Labor Relations Board for the enforcement of a certain order issued by it against Respondent, Brotherhood of Teamsters & Auto Truck Drivers Local No. 70, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of

*Eastern District of Michigan, sitting by designation.

America, its officers, agents, and representatives on December 21, 1971. The Court heard argument of respective counsel on October 12, 1972, and has considered the briefs and transcript of the record filed in this cause. On December 4, 1972, the Court being fully advised in the premises, handed down its decision granting enforcement of the Board's Order. In conformity therewith, it is hereby

Ordered and Adjudged by the Court that Respondent Brotherhood of Teamsters & Auto Truck Drivers, Local No. 70, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, its officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Refusing to give full force and effect to the National Master Freight Agreement and its Joint Council 7 Local Pickup and Delivery Supplemental Agreement for the contract term April 1, 1970 to June 30, 1973.

(b) Recognizing or giving force and effect to individual contracts negotiated with separate employer-members of California Trucking Association, Inc., (hereinafter called CTA).

(c) Requesting and demanding, and seeking separate bargaining and collective-bargaining agreements from the CTA employer-members listed on Appendix A attached hereto and from any other employer-members of the CTA who belong to the multiemployer group represented by CTA and TEI.

(d) Picketing, striking, and threats thereto, restraining and coercing CTA employer-members named

in Appendix A attached hereto, in the selection of their representatives for the purposes of collective bargaining or the adjustment of grievances.

2. Take the following affirmative action which is designed to effectuate the polices of the National Labor Relations Act:

(a) Notify in writing the CTA and each of its employer-members named in Appendix A attached hereto that it will adhere to and be bound by the terms of the National Master Freight Agreement and its Joint Council 7 Local Pickup and Delivery Supplemental Agreement for the contract term April 30, 1970 to June 30, 1973, and sign said agreements upon request.

(b) Notify in writing all CTA employer-members named in Appendix A with whom it has negotiated separate agreements that they are null and void, and the Respondent will cease giving effect to them.

(c) Post at its union offices in Oakland, California, and distribute to its membership by mail or other means, copies of the attached notice marked "Appendix B." Copies of said notice, to be furnished by the Regional Director for Region 20, (San Francisco, California), after being duly signed by a representative of the Respondent, shall be posted immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to its members are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Deliver to the Regional Director for Region 20 signed copies of said notice in sufficient numbers to be posted by each of the CTA employer-members named in Appendix A attached hereto, at their places of business, if said employers are willing.

(e) Notify the Regional Director, for Region 20, in writing, within 20 days from the date of this Judgment, what steps the Respondent has taken to comply herewith.

With costs in this Court in favor of the Board and against the Respondent.

Costs: One-half claimed cost of brief of the Board $144.20.

So Ordered
Ben. C. Duniway
Ozell M. Trask
U.S. Circuit Judges
Talbert Smith
U.S. District Judge

Endorsed, Judgment Filed and Entered
Feb. 26, 1973
/s/ Dennis R. Mathews
Dennis R. Mathews
Clerk

A TRUE COPY
ATTEST: Feb. 26, 1973
Filed Feb. 26, 1973
Dennis R. Mathews
Clerk
U.S. Court of Appeals
By M. Finley, Deputy

Appendix A

CTA Members For Whom We Hold Authorization To Represent Covering
Local 70 Pickup & Delivery Supplemental Agreement

A & B Garment Delivery of San Francisco, Inc.
Alltrans Express California, Inc.
Associated Freight Lines
Atlas Freight Lines
Atthowe Transportation Co.

Beckman Express & Warehouse Co.
Bigge Drayage Co.

C-Line Express, Inc.
California Motor Transport Co.
Camall Trucking, Inc.
Coast Drayage dba Coast Lines
Consolidated Freightways Corporation of Delaware
Crescent Truck Lines

Ronald L. Day Transportation Co.
Delta Lines, Inc.
Di Salvo Trucking Company

East Bay Drayage & Warehouse Co.
Eucinal Terminals
Enterprise Transport Company

Frank's Trucking
Fraser Trucking Co., Inc.

Garrett Freightlines, Inc.

Haslett Company
Hills Transportation Company, a subsidiary of Containerfreight Corporation

IML Freight, Inc.
Illinois-California Express, Inc.
L & V Trucking, Inc.

Lodi Truck Service

M & N Truck Line
Manufacturers Distribution Terminal
March Transport Co.
Moore Truck Lines
Morris Draying Company

Navajo Freight Lines, Inc.
Northwestern Drayage & Warehouse

O.N.C. Motor Freight System

Pacific Intermountain Express Co.
Pacific Express Transportation
Pacific Motor Trucking Company
Peters Truck Lines

Ringsby-Pacific, Ltd.
Ringsby Truck Lines, Inc.
Ruddway Drayage, Inc.

Safe Transportation Company
The Santa Fe Trail Transportation Company
Security Transportation Company
Senna Trucking Co., Inc.
Shippers Express Company
Sterling Transit Co., Inc.
Stewart Drayage Lines
System 99

T.I.M.E.-DC, Inc.
Transcon Lines
Tri-County Freight

United Truck Line

Valley Copperstate System

Walton Drayage & Warehouse Co., Inc.
Warren Transportation Co.
Wells Cargo, Inc.
Western Gillette, Inc.
Willig Freight Lines

Yellow Freight System, Inc.

Appendix B

Notice to Employees and Members Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board

An Agency of the United States Government

We Will Not refuse to abide by and give full force and effect to the National Master Freight Agreement and its Joint Council 7 Local Pickup and Delivery Supplemental Agreement for the contract term April 1, 1970 to June 30, 1973, and we will sign the same on request.

We Will Not request, demand, or seek a separate collective-bargaining agreement from CTA employer-members named in Appendix A attached to and made a part of the Trial Examiner's Decision or from any other employers belonging to the multiunion-multiemployer bargaining unit involved in this case.

We Will Not recognize or give force, effect, or validity to individual contracts negotiated by us with separate employer-members of CTA who are named in Appendix A attached to the Trial Examiner's Decision or with separate employers who are part of the multigroup bound by the National Master Freight Agreement and its Joint Council 7 Local Pickup and Delivery Supplemental Agreement.

We Will Not by strikes, picketing, or threats thereof, restrain or coerce the CTA employer-members named

in Appendix A attached to the Trial Examiner's Decision or any other CTA employer-member who belongs to the multiemployer group, in the selection of their representatives for the purposes of collective bargaining or the adjustment of grievances.

We Will notify in writing the CTA and each of its employer-members named in Appendix A attached to the Trial Examiner's Decision that we will adhere to and are bound by the terms of the National Master Freight Agreement and its Joint Council 7 Local Pickup and Delivery Supplemental Agreement for the contract term April 1, 1970 to June 30, 1973.

We Will notify in writing the CTA and each of its named in Appendix A attached to the Trial Examiner's Decision with whom we have negotiated separate collective-bargaining agreements, that they are null and void and that we will cease giving effect to them.

Brotherhood of Teamsters &
Auto Truck Drivers Local No.
70, International Brotherhood
of Teamsters, Chauffeurs,
Warehousemen & Helpers of America
(Labor Organization)

Dated ..... By.....
(Representative) (Title)

This Is an Official Notice and
Must Not Be Defaced by Anyone

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this Notice or compliance with its provisions, may be directed to the Board's Office, 13050 Federal Building, 450 Golden Gate Avenue, Box 36047, San Francisco, California, 94102, Telephone Number: 556-0335.

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1972

No. 72-1482

BROTHERHOOD OF TEAMSTERS AND AUTO TRUCK DRIVERS, LOCAL NO. 70, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, *Petitioner,*

VS.

NATIONAL LABOR RELATIONS BOARD, *Respondent,*

AND

CALIFORNIA TRUCKING ASSOCIATION, INC., *Intervenor.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF CALIFORNIA TRUCKING ASSOCIATION, INC. IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 63-64)[1] is reported at 470 F.2d 509; the Board's decision and order (Pet. App. 2-62) are reported at 194 NLBR No. 106.

JURISDICTION

The judgment of the court of appeals was entered on February 26, 1973. The jurisdiction of this court is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

Whether substantial evidence on the record as a whole supports the Board's finding that the Union violated Section 8(b) (3) of the Act by failing and refusing to adopt, sign, and abide by agreements negotiated for it by the multi-employer-multi-union collective bargaining unit of which the Union was a member; and that the Union violated Sections 8(b) (1) (B) and 8(b) (3) of the Act by attempting to negotiate separate and different contracts with employer members of California Trucking Association, Inc., and threatening, picketing, and engaging in other concerted activities against employers to com-

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[1] "Pet. App." refers to the Appendices bound with the petition. "R" references are to the pleadings, the decision and order of the Board, and other papers and proceedings bound as "Volume I, Volume of Pleadings" in the court below. "Tr." references are to the stenographic transcript reproduced and filed with the court below; "G.C.X." references are to exhibits of the Board's General Counsel reproduced and filed in the court below.

pel individual employer members of California Trucking Association, Inc. to negotiate separately with the Union, rather than through the multi-employer bargaining unit.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*) are set forth at Pet. App. 1.

STATEMENT

A. THE BOARD'S FINDING OF FACT

1. Background

Teamsters Union Local 70 is a constituent local affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, and as such is governed by the constitution and directives of the International Union (Pet. App. 10). California Trucking Association, Inc. is the collective bargaining representative of most of the major trucking companies in the State of California, including 66 motor freight carriers in Alameda County (Pet. App. 10).

By virtue of written powers-of-attorney given respectively in October, 1963 and November, 1966 by appropriate officials, the Union became part of a national multi-union negotiating group represented by the National Over-the-Road and City Cartage Policy

and Negotiating Committee.[2] This Committee negotiated with Trucking Employers, Inc., the authorized bargaining representative for a national multi-employer bargaining unit composed of several associations of trucking companies, including the California Trucking Association and its 66 Alameda County members who had authorized CTA and TEI to negotiate for them. The result of the multi-employer-multi-union negotiations was a National Master Freight Agreement and several local area supplemental agreements (including the Joint Council 7 Supplement covering Teamster Unions in the San Francisco Bay Area, including Local 70) for the terms 1964-1967 and 1967-1970 (Pet. App. 11).

2. The 1970 Negotiations

a. Background

The 1970 negotiations were conducted in the same manner as the 1964 and 1967 negotiations. The parties met not to negotiate a completely new agreement, but rather to bargain over changes and revisions in the old agreement. Under the specific terms of the 1967-1970 National Master Freight Agreement, the contract was not terminated, but kept in full force and effect throughout the negotiating period.

CTA and Trucking Employers, Inc., as in the past, solicited "Authorizations to Represent" from the various employers involved. The overwhelming majority of CTA members, including 66 employers in

[2]The name of this national negotiating committee was shortened to "National Freight Industry Negotiating Committee" for the 1970-1973 negotiations (Pet. App. 10).

Alameda County, executed Authorizations to Represent which appointed CTA and TEI to act as their representatives in the negotiation of the National Master Freight Agreement and applicable supplemental agreements. In addition, the authorization granted authority to the Executive Policy Committee of TEI to amend, ratify, conclude, or reject any and all collective bargaining agreements resulting from the negotiations. Thus, under the Authorization to Represent executed by CTA members, CTA and TEI had full, final and complete authority to negotiate the National Master Freight Agreement and supplemental agreements which covered the individual employers' operations (G.C.X. 23).

In 1964, and again in 1967, the International Brotherhood of Teamsters had solicited powers of attorney from its constituent locals. For 1970, however, the union national negotiating committee did not solicit new powers of attorney from its various locals, due to the fact that under the International's Constitution the local unions would continue to be party to the National Master Freight Agreement and the applicable supplements, as they could withdraw only upon six months' notice to the International and for good cause show to the satisfaction of the Union (Pet. App. 11-12, Tr. 334, G.C.X. 12, 57). The employers were notified that the bargaining agent for the various Teamster unions was not going to solicit new powers of attorney due to internal union procedures which automatically renewed those authorizations (Pet. App. 12, G.C.X. 57).

Local 70 was completely aware of the internal procedures necessary to withdraw from the multi-union bargaining unit, as were the other constituent locals of Joint Council 7. In the fall of 1969 Local 70 and other affiliates of Joint Council 7 requested permission from General Vice-President Frank Fitzsimmons to be excluded from the multi-union collective bargaining unit covered by the National Master Freight Agreement. Some time prior to December 22, these unions had formally requested the International Union to approve their withdrawal and grant them permission to bargain as a separate unit with the employers involved. (Pet. App. 13, G.C.X. 12). However, on December 22, most of the unions in Joint Council 7, and in particular Local 70, recinded their previous request to separate themselves from the national multi-union bargaining unit (Pet. App. 13, G.C.X. 24). More specifically, Local 70 and most of the unions in Joint Council 7 signed a document in which they unequivocally expressed their "desire to withdraw their prior request for a separate bargaining unit and remain part of the multi-union bargaining unit covered by the National Master Freight Agreement" (Pet. App. 13, G.C.X. 24). Thus, prior to the negotiations, all of the employers involved in this proceeding and Local 70 clearly evidenced their desire to remain part of the multi-employer-multi-union bargaining unit, and to be represented by the same negotiation committees which had represented them in the two preceding negotiations (Tr. 237-238).

b. The National Negotiations

1. Background.

The National Master Freight Agreement from 1967 to 1970 contained alternative methods of terminating or modifying the agreement. The first provision is found in Article 37, Section 1:

> "This Agreement shall be in full force and effect from April 1, 1967, to and including March 31, 1970, and shall continue from year to year thereafter unless written notice of desire to cancel or terminate the Agreement is served by either party upon the other at least sixty (60) days prior to date of expiration."

The above section is not the only method by which the agreement can be re-negotiated and was not the method used by the parties in structuring the 1970 negotiations (Pet. App. 14). Thus, Section 2 of Article 37 provides:

> "Where no such cancellation or termination notice is served and the parties desire to continue said Agreement but also desire to negotiate changes or revisions in this Agreement, either party may serve upon the other a notice of at least sixty (60) days prior to March 31, 1970, or March 31st of any subsequent contract year, advising that such party desires to revise or change terms or conditions of such Agreement."

Section 3 of Article 37 provides that after negotiating, if the parties are unable to agree upon changes or modifications in the agreement, either party shall be

permitted legal or economic recourse to support its demands. The import of Section 3 is that no such legal or economic activity will be undertaken until the parties conclude that they are unable to agree upon such changes and revisions.

On November 4, 1969, the national multi-union bargaining committee notified all employers party to the National Master Freight Agreement, including those represented by CTA, on behalf of each of the Teamster locals and affiliates signatory to and affected by the National Master Freight Agreement and its supplements, that the unions "desire to negotiate changes and revisions in the terms and conditions of such agreement . . . for the contract period commencing April 1, 1970, as provided in Article 37 thereof" (Pet. App. 14, G.C.X. 20). It is clear from that letter that the unions had chosen to negotiate changes and revisions in the terms of the agreement without cancelling it as provided for in Section 1. Prior to the Union's letter of November 24, 1969 indicating that it wished to negotiate changes and revisions in the National Master Freight Agreement and supplemental agreements, union representatives began a series of conferences to formulate contract proposals to be made in the forthcoming negotiations (Pet. App. 14-15). The International Brotherhood of Teamsters appointed a committee of about eighty union representatives from all over the country to serve on its national negotiating committee. Representatives from the Western Conference area included Fred Hofmann, Secretary-Treasurer of Teamsters Local 287

of San Jose; Tim Richardson, Business Manager of Teamsters Local 85 of San Francisco; A. N. Leishman, Secretary-Treasurer of Teamsters Local 70 of Oakland; and George King, an International Organizer attached to the Western Conference of Teamsters. In addition to serving on the unions' national negotiating committee, the aforementioned individuals comprised the national committee's subcommittee for bargaining on the Joint Council 7 Local Pick-up and Delivery Supplemental Agreement (Pet. App. 14-15, Tr. 57).

The national negotiating committee for the Teamsters Union had at least two preliminary meetings prior to the actual commencement of negotiations on January 7, 1970. On December 1, 1969, the national negotiating committee met at the headquarters of the International Brotherhood of Teamsters in Washington (Tr. 451). There, contract proposals submitted by various subcommittees were approved by the national negotiating committee (Pet. App. 15, Tr. 451). Later in December, the group met at the Palmer House in Chicago (Pet. App. 15, Tr. 451). In addition to the national negotiating committee, each local union involved in the National Master Freight Agreement negotiations sent two representatives to hear and approve of the proposals which the Teamsters were to make in the forthcoming negotiations (Pet. App. 15, Tr. 453). Local 70's Secretary-Treasurer, A. N. Leishman, was present at each of these meetings. He participated in the formulation of the proposals for the National Master Freight Agreement, as he

was part of the unions' negotiating committee. (Pet. App. 15-16, 45-47, Tr. 450-453).

2. The Negotiations.

The first formal meeting between the parties took place on January 7, 1970,[3] at the Hilton Hotel in Washington, D.C. (Pet. App. 16, Tr. 110, 160, 163, 340, 351, 1206). At that meeting, Frank Fitzsimmons, on behalf of the unions' negotiating committee, read a list of all local unions being represented in the National Master Freight Agreement and supplemental agreement negotiations. (Tr. 454). When Fitzsimmons read Local 70's name as one of the unions being represented by the national negotiating committee, Leishman, who was present in the room, raised no claim or contention that Local 70 was not participating in, or bound by, the negotiations or the national committee (Pet. App. 16, Tr. 145, 343, 454). Later in the January 7 meeting, the unions' negotiating committee presented its contract proposals to the TEI negotiating committee (Pet. App. 16, Tr. 160, 454).

Representatives of TEI and the unions' national negotiating committee continued to meet to negotiate the terms and provisions of the revised National Master Freight Agreement. At the same time, the TEI committee and the Union committee delegated to other representatives the authority to negotiate changes and revisions in the various agreements supplemental to the National Master Freight Agreement. The subcommittees were empowered to negotiate to the fullest

[3]All dates hereafter are in 1970 unless otherwise specified.

extent possible on all terms except monetary items, which were left exclusively to the respective national negotiating committees (Pet. App. 17, Tr. 147, 357, 359, 535, 537). As to all of the non-monetary items, such agreements as were reached by the subcommittee negotiators would be approved by the national negotiating committees. However, in the event that the subcommittees were unable to agree on changes or revisions of certain non-monetary items, these items were referred back to the respective national negotiating committees for final resolution. At no time during the negotiations was any subcommittee authorized to enter into separate agreements with any employer or group of employers. The national negotiating committee at all times held the full and final authority over all of the terms and provisions of the supplemental agreements, especially those which could not be resolved by subcommittee representatives. These deadlocked items had to be referred back to the national negotiating committees so that they would have a chance to bargain concerning them prior to any economic or legal action.

In accordance with the foregoing arrangements, the national negotiating committees met in Washington, D.C. throughout February and March, concluding on April 2 a tentative agreement on all terms of the National Master Freight Agreement (Pet. App. 18, Tr. 162, 352). Along with certain language changes in the National Master Freight Agreement, the settlement provided for a wage increase for all employees of $1.10 per hour for a three year and three month

period ending June 30, 1973 (Pet. App. 18, Tr. 465). In addition, the national negotiators agreed upon certain increases in payments to health and welfare trust funds, pension trust funds, an extra holiday, and certain changes in vacation allowances. This understanding was ultimately incorporated into a written agreement between the Teamsters Union and the employers (G.C.X. 19).

Following the tentative settlement of April 2, certain Teamster unions in the Chicago area, who comprised a bargaining unit separate and apart from that established by the National Master Freight Agreement, went on strike due to their displeasure with the wage proposal of $1.10 per hour over three years offered by Chicago area employers. The unions in Chicago were insisting on a settlement of $1.65 an hour over three years. The economic action which occurred in Chicago resulted in a modification of the tentative settlement reached between the two national negotiating committees (Pet. App. 18-19). The committees agreed that in the event the unions in Chicago were successful in compelling the Chicago area employers to agree to a contract with a wage rate higher than $1.10 an hour over three years, the National Master Freight Agreement negotiations would be reopened for consideration of wage rates only. The parties would have thirty days in which to negotiate wages in light of the Chicago settlement, following which, if no agreement were reached, either party could resort to economic or legal action (Tr. 352, 465). This proviso was incorporated in a Memorandum of

Understanding which became part of the tentative settlement formalized at a meeting between the representatives of the employers and unions at the headquarters of the International Brotherhood of Teamsters in Washington, D.C. (G.C.X. 55, pages 3-5).[4] This settlement was submitted to the employees covered by the National Master Freight Agreement and its supplements for ratification which resulted in a favorable vote by mail ballot announced on May 18, 1970 (Pet. App. 18, 22, G.C.X. 25).

c. The Joint Council 7 Negotiations

The subcommittee appointed by the national negotiating committees for negotiating the Joint Council 7 Supplemental Agreement met in Washington, D.C. approximately twelve times between February 17, 1970, and March 13, 1970 (Pet. App. 13, Tr. 150). Leishman, Secretary-Treasurer of Local 70, attended all of the meetings (Pet. App. 17, Tr. 150). As Local 70's representative, Leishman participated fully in the meetings and, on behalf of Local 70, had a great deal to say on certain portions of the Supplemental Agreement (Pet. App. 17, 47, Tr. 151-154).

On March 13, all of the items which had been agreed to with respect to the Joint Council 7 Supplemental Agreement were finalized in writing (Pet. App. 17, G.C.X. 17). The items which could not be resolved by the subcommittees were deadlocked and

[4]Also approved at that meeting was the Joint Council 7 Pick-up and Delivery Supplemental Agreement as negotiated by the subcommittees of the national negotiating committees and finalized on April 17 (G.C.X. 55, pages 15-16).

referred back to the national negotiating committee for resolution (Pet. App. 17).

On April 17, the representatives of the subcommittees negotiating the Joint Council 7 Supplemental Agreement went before a meeting of the national negotiating committees at the Union's headquarters in Washington, D.C. (Pet. App. 17-18). Present for the union subcommittee were Leishman, Hoffmann and Richardson. During the meeting, the national committees resolved the differences between the parties on language in the health and welfare provision of the Supplemental Agreement (Tr. 158, 284, 287, 1067), and all of the other deadlocked items were settled on the basis of the tentative monetary settlement reached on April 2 (Pet. App. 18).

d. After the Negotiations

On May 18, the Teamsters Union announced that the tentative settlement of the National Master Freight Agreement and all Supplemental Agreements had been ratified by a nationwide vote of the employees affected (Pet. App. 18). Under the terms of the settlement, the employees were to receive $1.10 an hour over the following three years and three months, subject only to the possible reopening of the contract for thirty days to discuss wages in the event that the Chicago unions obtained a higher settlement. In addition, all of the Supplemental Agreements, including the Joint Council 7 Supplemental Agreement, were ratified by the membership of the Teamsters Union (Pet. App. 18, Tr. 311).

The Chicago area unions were successful in their strike and secured a contract calling for a wage increase of $1.65 an hour over a three-year period (Pet. App. 19, Tr. 270-271). This settlement resulted in the reopening of the National Master Freight Agreement for the purpose of negotiating new wage rates. These negotiations were held from July 2 to July 6, and resulted in an agreement on wage increases of $1.85 an hour instead of $1.10 an hour (Pet. App. 19, 44, Tr. 270-271).

As far as the Joint Council 7 Supplemental Agreement was concerned, there were two meetings following the final settlement by the national committee on April 17. The first was on June 19 at the Western Conference of Teamsters' office in Burlingame, California. Among those present for the union negotiating committee was Local 70's Secretary-Treasurer Leishman. The purpose of the meeting was to agree on language to be incorporated in the agreement. After two or three hours, the parties were in accord on the language of the Agreement (Pet. App. 19, Tr. 1064-1066).

A second meeting occurred on July 29 at the Western Conference of Teamsters' building in Burlingame. Leishman was not at this meeting, although he had been notified of it by Fred Hofmann, the union negotiating committee chairman. At this meeting, the representatives reviewed the galley proofs of the settlement, and finalized vacation and health and welfare language (Pet. App. 19, Tr. 1067-1069). Joseph Diviny, president of Joint Council 7, signed the

agreement on behalf of all affiliated local unions, including Local 70 (Pet. App. 19).

e. **Local 70's Renunciation of the Agreement**

In spite of the fact that the 1967-1970 contract had never been terminated, and an impasse in negotiations had not been reached, shortly after midnight on April 1, Local 70 began strike activity against members of CTA in Alameda County (Pet. App. 20). The strike activity was accompanied by pickets carrying signs bearing the legend "Teamsters Local 70 On Strike." By April 2, the strike was widespread, affecting virtually every member of CTA operating a terminal within the jurisdiction of Local 70 (Pet. App. 20, Tr. 163, 176, 584, 681, 913, 1078-1079).

On the evening of Friday, April 3, Judge Mosbacher of the Alameda County Superior Court issued a temporary restraining order and order to show cause halting the picketing and strike activity engaged in by Local 70 (Pet. App. 20, Tr. 1080). The order to show cause was returnable on April 6, at which time a hearing was held before Judge Lercara of the same court (Tr. 1080). Judge Lercara issued a preliminary injunction on April 7 banning all picketing, work stoppages and other economic activity by Local 70 arising out of its disagreement with the national negotiations in Washington, D.C. (Pet. App. 21, G.C.X. 255).

An object of the picketing and economic activity directed against employer members of CTA in early April was Local 70's intent to break out of the multi-

union bargaining unit to negotiate a different contract with the struck employer members of CTA (Pet. App. 35-36). This was stated by James Muniz, President of Local 70, in a radio interview in early April (Pet. App. 22). Muniz said that the Union was taking economic action in order to negotiate a better contract with the employer. He referred to the Chicago strike, stating that Alameda County used to be the prime pick-up and delivery contract in the nation, but now other areas were getting ahead. (Pet. App. 22, Tr. 1082).

Picketing against employer members of CTA broke out again in early May (Pet. App. 30). On or about May 8, several members of CTA were picketed by persons carrying signs claiming that they were members of Teamsters Union Local 208 (Los Angeles) and other local unions (Pet. App. 30-31). Some of the pickets carried signs on which was printed "Teamsters Local 70 On Strike," but had the "70" altered to some other number by marking pen. The "7" was changed to a "2" and an "8" added behind the "0" to make the legend "208". Other signs used read, "Teamsters Local 104," "170," "457" and "705" (Pet. App. 31, Tr. 703-713, 799-801).

Local 70's object of separating itself from the multi-union negotiations because of its dissatisfaction with the tentative agreement was clearly announced in a letter sent by the officers of Local 70 to the International Brotherhood of Teamsters on May 13 (Pet. App. 23-25, G.C.X. 10). In that letter Local 70 boldly

proclaimed, "This Local shall not be and does not consider itself bound by any negotiated terms or conditions of any Supplemental Agreement affecting the territorial jurisdiction or members of Local 70." In paragraph seven of that letter, Local 70 again stated, "[W]e wish to re-emphasize that we do not consider ourselves bound by those negotiations."

Frank Fitzsimmons, the International's then General Vice-President, responded to this attempt to withdraw from the multi-union unit by telegram on May 18 (Pet. App. 25-26, G.C.X. 11) and by detailed letter on May 19 (Pet. App. 26-29, G.C.X. 12). The letter of May 19 sets forth a clear and specific point-by-point rebuttal of every statement made in Local 70's letter attempting to withdraw from the multi-union bargaining unit. As stated by General Vice-President Fitzsimmons, Local 70 was part and parcel of the multi-union negotiations both voluntarily and according to the International's Constitution by which Local 70 is governed, and Local 70 never had been given the authority or understanding that it would have any right to negotiate separately or to ratify separately any agreement affecting its relations with employers in the Oakland area. To the contrary, Local 70 was bound by the National Master Freight Agreements and the supplements negotiated thereunder, including the Joint Council 7 Pick-up and Delivery Supplement. As noted in Mr. Fitzsimmons' letter, those agreements were ratified on May 18, 1970, and were binding on Local 70. Further, Mr. Fitzsimmons declared that Local 70 did not need to exe-

cute a new power of attorney to become or remain a part of the multi-union bargaining unit:

> "Local 70, together with the other Locals in Joint Council 7, at one time did seek such permission to withdraw within the time permitted by the Constitution. However, thereafter, all said Locals, including Local 70, by appropriate resolution withdrew said request and specifically agreed to remain part of the national unit. Local 70, therefore, is bound by the provisions of the Constitution relating to the National Agreement.
>
> "By reason of all the foregoing, it is clear that Local 70 is part of the national bargaining unit, and is bound by the national negotiations."

In addition to notifying the International Union that it did not consider itself bound by the national negotiations, Local 70 sent copies of its letters to all employer members of CTA operating facilities in Alameda County. This was accompanied by a letter from Local 70 to the employers which stated (Pet. App. 23, G.C.X. 9):

> "We are prepared to negotiate the terms and conditions of an agreement, including supplemental agreement, as you see fit.
>
> "Please notify this Local Union immediately of a convenient time and place for negotiations."

Shortly after the May 18 ratification, many of the members of CTA began implementing portions of the new contract with regard to employees represented by Local 70 (Pet. App. 29). Among the various provisions the companies began to institute was a new

seniority clause, which provided that an employee would not gain seniority until he had worked for the company for thirty days within a ninety-day period, as opposed to the old clause, which provided that an employee would gain seniority upon working thirteen days with in a thirty-day period. Another provision which most companies began to implement was the new job bidding procedure. The new contract provided that employees would be allowed to bid job classifications and shift, but routes were to be assigned by the company. The attempts of the companies to implement the provisions of the new agreement were, in many cases, thwarted by Teamsters Local 70, primarily by threats of picketing and actual strikes in May, June and July, until the National Labor Relations Board obtained injunctive relief against Local 70 under the provisions of Section 10(j) of the Act (Pet. App. 29-35, Tr. 557-562, 644-656, 713-718, 811-819, G.C.X. 14, 15).

B. THE DECISIONS BELOW

The Board concluded that Local 70 violated Section 8(b)(3) of the Act by refu ing to sign, accept and be bound by the National Master Freight Agreement and Joint Council 7 Pick-up and Delivery Supplemental Agreement negotiated for the multi-employer-multi-union collective bargaining unit of which Local 70 was a member (Pet. App. 35-36, 56). The Board further found that Local 70 violated Section 8(b)(1)(B) and 8(b)(3) of the Act by attempting to negotiate and negotiating individual contracts with

employer-members of the multi-employer bargaining unit, and by striking, picketing and threats of economic activity directed against members of the CTA for the purpose of separating them from the multi-employer bargaining unit, thereby restraining and coercing those employers in the selection of their representative for the purposes of collective bargaining or the adjustment of grievances (Pet. App. 36-37, 56). The Board ordered the Union to cease and desist from engaging in the aforementioned violations of Sections 8(b)(1)(B) and 8(b)(3) of the Act, to notify in writing the CTA and each of its members that the Union will adhere to and be bound by the terms of the National Master Freight Agreement and Joint Council 7 Pick-up and Delivery Supplemental Agreement, to sign such agreements upon request, to notify all employers with whom it has negotiated separate agreements that they are null and void and that the Union will cease giving effect to them, and to post appropriate notices (Pet. App. 2, 56-58).

In a *per curiam* opinion, the court of appeals sustained the Board's findings and conclusions, and enforced its order in full (Pet. App. 63-64).

ARGUMENT

Petitioner contends that the Board's order deprives its members of the right to choose their own collective bargaining representatives during the term of the agreement and "presumably forever" (Pet. 8-10). In

actuality, the Board's order does nothing of the sort. Instead, the Board has ordered the Union to be bound by the results of multi-union negotiations into which it freely and voluntarily entered and from which it thereafter illegally attempted to withdraw. The Board's order does not require the Union to continue to be represented for purposes of collective bargaining by the National Freight Industry Negotiating Committee or any other individual or group. Nor does the Board's order, or the parties' agreement, preclude Local 70 from effectuating a timely withdrawal from the multi-union bargaining unit with respect to future negotiations. *The Evening News Association, etc.*, 154 NLRB 1482, 1494 (1965). Thus, no "special circumstances" existed which warranted Local 70's untimely attempt to withdraw from the multi-union bargaining group. *National Labor Relations Board v. Sheridan Creations, Inc.*, 357 F.2d 245, 248 (2nd Cir. 1966).

Petitioner continues to assert, as it did before the Board and the court below, that the existence of the collective bargaining agreement to which it is bound "is in substantial dispute" or that the agreement is "not even in existence" (Pet. 11). However, as noted by the Trial Examiner, the National Master Freight Agreement is found in the record as General Counsel's Exhibits 19 and 26, and the Joint Council 7 Supplement thereto is found in the record as General Counsel's Exhibits 17, 18, 36 and 37 (Pet. App. 42-43).

Petitioner further complains (without specificity) of many evidentiary rulings of the Trial Examiner (Pet. 11-12). But, as Petitioner correctly notes, the rulings

were fully considered and affirmed by the Board (Pet. App. 2-3), and upheld by the Court of Appeals (Pet. App. 63-64). Thus, this issue does not warrant reexamination by this Court. *National Labor Relations Board v. Pittsburgh Steamship Company,* 340 U.S. 498, 502-503 (1951); *Universal Camera Corp. v. National Labor Relations Board,* 340 U.S. 474, 490-491 (1951).

Finally, Petitioner contends that substantial evidence on the record as a whole does not support the Board's findings (Pet. 12). The court of appeals found that the record adequately supported the Board's factual determinations, and this issue does not warrant review by this Court. In any event, the facts summarized above show that the Board was fully justified in ruling that the Union committed the unfair labor practices.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

WESLEY J. FASTIFF,
ROBERT M. LIEBER,
Attorneys for Intervenor
California Trucking Association, Inc.

Of Counsel:
LITTLER, MENDELSON & FASTIFF.

July, 1973.

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In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 72-1482

BROTHERHOOD OF TEAMSTERS AND AUTO TRUCK DRIVERS, LOCAL NO. 70, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

and

CALIFORNIA TRUCKING ASSOCIATION, INC.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 63-64) is reported at 470 F. 2d 509. The Board's decision and order (Pet. App. 2-3) are reported at 194 NLRB No. 106.

JURISDICTION

The judgment of the court of appeals (Pet. App. 66-69) was entered on February 26, 1973. The petition for a writ of certiorari was filed on May 2, 1973. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the Board properly found that Local 70 was a member of a multiparty bargaining unit and that it violated its bargaining obligation under the National Labor Relations Act by refusing to be bound by the agreements negotiated for that unit.

2. Whether the Board's procedure was valid and proper.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. 151, *et seq.*), are set forth at page 1 of the appendix to the petition.

STATEMENT

A. The Board's Findings of Fact

Brotherhood of Teamsters and Auto Truck Drivers, Local No. 70, affiliated with the International Brotherhood of Teamsters (hereinafter "the International") and bound by the International's Constitution, represents truck drivers and helpers employed by 66 motor carriers and freight haulers in Alameda County, California, all of whom are members of the California Trucking Association (hereinafter "the Association") (R. 39, 54).[1] The Association represents its employer-members—a substantial number of whom are engaged in furnishing interstate transportation services—in regional multiparty collective bargaining with the unions representing their employees, including Local 70 (R. 37). The Association's employer-members have also designated the National Negotiating Committee of Trucking Employers, Inc.

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[1] "R" refers to Volume I of the record in the court below, a copy of which has been lodged with the Clerk.

(hereinafter "the Negotiating Committee") to negotiate master collective bargaining agreements on a nationwide basis with the International (R. 39-40).

In 1964, and again in 1967, the International, on behalf of its various constituent locals including Local 70, and the Negotiating Committee, on behalf of its employer-members including the Association, negotiated successive three-year nationwide agreements (R. 40). Concurrently, riders or supplements to the national agreements were negotiated on a regional or local level, in multi-party units composed of local or state employer associations and various committees of the International's locals (R. 39-40, 54, 60-62). One such committee, Joint Council 7, comprising San Francisco Bay area locals including Local 70, negotiated successive supplements with the Association in 1964 and 1967 (R. 39-40, 54). By virtue of its participation in the national and regional negotiations, Local 70 became a party to and was bound by the 1964 and 1967 National Agreements and Joint Council 7 Supplements (R. 40, 54).

The 1967-1970 National Agreement and all the supplements were due to expire on March 31, 1970 (R. 42). In preparation for forthcoming negotiations, the general vice-president and chairman of the International's National Negotiating Committee, Frank E. Fitzsimmons, designated, among others, Local 70's secretary-treasurer and principal officer, A.N. Leishman, to serve on the National and Joint Council 7 Committees (R. 42, 58). These nominations were confirmed shortly before Fitzsimmons, in November 1969, formally notified the employers of the International's intention to negotiate changes and revisions in the 1967-1970 National and Supplemental Agreements (R. 42). Thereafter, Leishman

participated fully in the pre-negotiation deliberations of the National and Joint Council 7 Committees. In early December 1969, he attended a convention of all affiliated International locals in Chicago at which suggested revisions of the National Agreement proposed by the National Committeemen, including Leishman, were incorporated into the bargaining demands which the International intended to present to the Negotiating Committee in the forthcoming negotiations (R. 42, 59).[2]

The first meeting between the International's National Committee and the Negotiating Committee was held on January 7, 1970, in Washington, D.C. (R. 42). Fitzsimmons presented to the Negotiating Committee the roster of some 350 locals, including Local 70, which were covered by the 1970 negotiations (R. 42-43). Leishman, who was present throughout this meeting, raised no objection to his membership on the National Committee or to Local 70's inclusion in national negotiations (R. 43). Negotiations continued and, on April 2, a tentative agreement on modifications of the 1967-1970 National Agreement was reached by the parties (R. 43).[3]

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[2] At about this time, Local 70 requested permission to withdraw from multiparty negotiations; but, on December 22, 1969, after conferring with the International representatives, Local 70 agreed to remain in the multiparty unit (R. 41).

[3] This agreement was tentative only with respect to a general wage increase provision which was to be reopened if and when several Chicago locals—who had withdrawn from the multiparty unit well in advance of 1970 negotiations and were not parties to the National Agreement or an appropriate supplement—were successful in negotiating a more favorable wage settlement (R. 43). Pursuant to this understanding, the negotiators reconvened in July 1970, reopened the tentative wage settlement, and approved a final wage increase more favorable than the one recently negotiated by the Chicago locals (R. 44).

Meanwhile, on March 13, 1970, labor and management representatives who had been negotiating changes in the Joint Council 7 Supplemental Agreement reached accord on all non-monetary items which they were authorized to negotiate. On that date, Leishman, who had attended all 11 of the negotiating sessions, signed a memorandum detailing the agreed-upon revisions. (R. 43.)[4]

In early May 1970, the terms of the agreed-upon revision in the National and Supplemental Agreements were submitted to the International's 400,000 members, in a national referendum supervised by the United States Department of Labor (R. 44). On May 18, ratification of all agreements was announced (R. 46). In June, Leishman attended a "form and format" meeting with other Joint Council 7 representatives to incorporate the agreed upon revisions into contract language for the 1970-1973 Supplemental Agreement (R. 44). Finally, on August 10, the president of Joint Council 7 signed the supplement on behalf of the other unions, including Local 70 (R. 44, 56).

Meanwhile, on April 1, 1970, Local 70, notwithstanding the no-strike clause contained in the 1967-1970 National Agreement which had remained in effect throughout the 1970 negotiations (R. 42, 44), initiated strike and picketing activity at most of the carrier terminals in Alameda County. This resulted in work stoppages af-

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[4] Under the practice governing these bifurcated negotiations, final settlement of "monetary" items including such subjects as holidays, vacations, and health and welfare payments was referred for review and resolution to the negotiators for the International and the Negotiating Committee. On April 17, 1970, all of the monetary items raised in the Joint Council 7 negotiations were finally settled by the National Committee. Leishman attended this meeting. (R. 43.)

fecting almost all Association members whose employees were represented by Local 70 (R. 45). Local 70's president announced that the purpose of this economic activity was to negotiate more favorable contract terms than those negotiated by the International (R. 45-46). Shortly thereafter, Local 70's strike and picketing activities were enjoined by a state court (R. 45). Local 70 nevertheless resumed its strike activity and, on May 13, notified the Association's employer-members, by letter, that it did not consider itself bound by the National and Joint Council 7 Agreements. Local 70 demanded that all the Association's employer-members bargain separately with Local 70 for new agreements (R. 46-47).[5]

Following the ratification announcement of May 18 (*supra*, p. 5), Local 70's strike and picketing activity intensified, and attempts by the Association's employer-members in Alameda County to implement the revisions contained in the Joint Council 7 Supplement were thwarted (R. 49-53). In July 1970, the United States District Court for the Northern District of California, upon petition of the Board's Regional Director pursuant to Section 10(j) of the Act, 29 U.S.C. 160(j), enjoined Local 70's activity pending a final determination by the Board (R. 58, n. 12).

B. The Decisions Below

On these facts, the Board, in agreement with the Trial Examiner, found that Local 70 became a part of

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[5] The letters were accompanied by statements setting forth Local 70's proclaimed independence from the national bargaining unit (R. 46-47). In reply, the International's vice-president, Fitzsimmons, denounced Local 70's activities, categorically refuted its assertions, and concluded that "it is clear that Local 70 is a part of the national bargaining unit, and is bound by the national negotiations" (R. 48-49, 56-57).

the multiunion-multiemployer bargaining unit in the negotiations for the 1964-1967 and the 1967-1970 contracts; that it took no unequivocal steps to disassociate itself from that unit until it notified the Association's employer-members and the International, by its letters of May 13, 1970, of its withdrawal from the unit; and that, since the attempted withdrawal occurred after collective-bargaining negotiations had begun and were almost completed, it was untimely and ineffective. Accordingly, the Board held, Local 70 violated Section 8(b)(3) of the Act by refusing to be bound by the agreement negotiated for the multiparty unit and by insisting upon separate negotiations. (Pet. App. 2-3, 37-40.)[6] The Board further found that Local 70, by exerting economic pressures to compel the Association's employer-members to bargain directly with Local 70, had violated Sections 8(b)(1)(B) and 8(b)(3) of the Act by denying those employers the right to select and retain their duly designated bargaining representatives (Pet. App. 36-37). The Board's order requires Local 70, *inter alia*, to notify the Association and each of its employer-members that it will adhere to the 1970-1973 National and Joint Council 7 Supplemental Agreements, and will sign those agreements on request (Pet. App. 56-62).

The court of appeals sustained the Board's findings and conclusions, and enforced its order (Pet. App. 63-64).

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[6] The Board found, contrary to Local 70's assertion, that the new National and Joint Council 7 Supplemental Agreements had been executed by the other members of the multiparty unit (Pet. App. 41-45).

ARGUMENT

1. Local 70 contends (Pet. 9-10 and n. 6) that it was entitled to negotiate a separate contract for its members at any time. "The privilege of becoming an 'exclusive bargaining' agent * * * is a creature of Congress to whose grant Congress was therefore free to attach such conditions as it saw fit." *Fay* v. *Douds*, 172 F. 2d 720, 724 (C.A. 2). Congress vested the Board with broad discretion to determine the bargaining unit for which a representative may be selected, including the authority to sanction a multiparty bargaining unit. See *National Labor Relations Board* v. *Truck Drivers Local No. 449*, 353 U.S. 87, 95. In the interest of maintaining stability in collective bargaining, the Board has properly concluded that, once negotiations have commenced on a multiparty basis, members of the unit, be they employers or unions, may not withdraw from the unit except with the consent of the other side or in special circumstances.[7]

Accordingly, the only question on the merits is whether the Board properly found that Local 70 had

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[7] See *National Labor Relations Board* v. *Jeffries Banknote Co.*, 281 F. 2d 893, 896 (C.A. 9); *National Labor Relations Board* v. *Sheridan Creations, Inc.*, 357 F. 2d 245, 247-248 (C.A. 2), certiorari denied, 385 U.S. 1005; *Publishers' Ass'n* v. *National Labor Relations Board*, 364 F. 2d 293, 295 (C.A. 2), certiorari denied, 385 U.S. 971; *Retail Clerks Union No. 1550* v. *National Labor Relations Board*, 330 F. 2d 210, 215-216 (C.A. D.C.), certiorari denied, 379 U.S. 828.

The Board's order merely requires Local 70 to abide by the 1970-1973 agreements (Pet. App. 57). There is no basis for Local 70's assumption (Pet. 9, 10) that the Board's order requires Local 70 to continue as a member of the multiparty unit "forever." To the contrary, it may withdraw from the multiparty unit at the end of the contract period, provided it gives timely notice of such withdrawal.

agreed to bargain on a multiparty basis and that it sought to withdraw from that unit after negotiations had commenced. That evidentiary issue does not warrant review by this Court. *Universal Camera Corp.* v. *National Labor Relations Board,* 340 U.S. 474, 490-491. In any event, the facts summarized above show that there is ample evidentiary support for the Board's findings.[8]

2. Local 70 also contends (Pet. 7-8) that the court of appeals overlooked "major procedural irregularities" which prejudiced its right to a fair hearing.

(a) Local 70 contends that the Trial Examiner erred in receiving testimony by an Association employer-member that he had received a letter from Local 70 even though the member was unable to produce the letter itself (Tr. 723-725, G.C. 29, 29(a)).[9] However, Local 70's own witness admitted that he had mailed this letter to all Association employer-members (Tr. 1329-1330).

(b) Local 70 contends that the Trial Examiner erroneously limited the cross-examination of a witness. In fact, however, while he refused to allow cross-examination that exceeded the scope of direct, he ordered that the witness be made available to Local 70 as an adverse witness under Rule 43(b) of the

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[8] Local 70's further contention (Pet. 10-11) that there was no multiparty collective bargaining agreement in existence similarly presents only an evidentiary issue; moreover, there is ample support for the Board's finding that there was such an agreement (see Pet. App. 41-45).

[9] "Tr." refers to the transcript of testimony in the Board proceeding, and "G.C." to the General Counsel's exhibits therein.

Federal Rules of Civil Procedure; Local 70 determined not to conduct such further examination (Tr. 693-694, 699-700).

(c) Local 70 contends that Section 10(b) of the Act, 29 U.S.C. 160(b), barred amendment of the complaint to allege additional instances of unlawful picketing that occurred in June 1970 (Tr. 682-684). However, since the charges were timely filed and the original complaint based upon those charges alleged unlawful picketing activity "[a]t all times since on or about April 3, 1970" (R. 13), the amendment was permissible. See *National Labor Relations Board* v. *Fant Milling Co.*, 360 U.S. 301.

(d) Contrary to Local 70's contention, the Trial Examiner properly excluded from the scope of Local 70's subpoena *duces tecum* unspecified "internal" records and documents of the Association, because they were not shown to be germane to the issues in this case (Tr. 1158-1162, 1170-1172). In any event, Local 70 was permitted to examine the Association's files, and, as a result, almost 200 exhibits were introduced and received in evidence (Tr. 1197-1199, G.C. 58-247).

(e) Finally, contrary to Local 70's contention, the Trial Examiner justifiably declined to order counsel for the Association to testify. Counsel had asserted the attorney-client privilege, and the Trial Examiner correctly determined that the testimony would, in any event, relate only to the accuracy of the underlying charges, concerning which substantial evidence had already been received (Tr. 1405-1407, 1411).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

PETER G. NASH,
General Counsel,
JOHN S. IRVING,
Deputy General Counsel,
PATRICK HARDIN,
Associate General Counsel,
NORTON J. COME,
Assistant General Counsel,
JOHN M. FLYNN,
Attorney,
National Labor Relations Board.

JULY 1973.

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